No. [redacted] 245

FILED
JUL 3 1957
JOHN T. FEY, Clerk

IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 7302

ESTATE OF FRANK H. KNIPP, HOWARD F. KNIPP, EXECUTOR, PETITIONER AND CROSS RESPONDENT; AND HOWARD F. KNIPP AND ESTATE OF FRANK H. KNIPP, HOWARD F. KNIPP, EXECUTOR, *Petitioners*,

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT AND CROSS PETITIONER, AND COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

On Appeal from the Judgment of The Tax Court of the United States

APPENDIX B TO PETITIONERS' BRIEF

CAROLYN E. AGGER,
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Washington, D. C.,
Attorney for Petitioners and Cross Respondent.

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IN THE

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FOR THE FOURTH CIRCUIT

No. 7302

ESTATE OF FRANK H. KNIPP, HOWARD F. KNIPP, EXECUTOR, PETITIONER AND CROSS RESPONDENT; AND HOWARD F. KNIPP AND ESTATE OF FRANK H. KNIPP, HOWARD F. KNIPP, EXECUTOR, *Petitioners*,

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT AND CROSS PETITIONER, AND COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

On Appeal from the Judgment of The Tax Court of the United States

APPENDIX B TO PETITIONERS' BRIEF

Docket No. 42545

ESTATE OF FRANK H. KNIPP, deceased, HOWARD F. KNIPP, Executor, *Petitioner*,

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

APPEARANCES—For Petitioner: Randolph E. Paul, Esq. (Deceased), Harry E. Karr, Esq., Carolyn R. Agger, Esq., Julian M. Stern, Esq. For Respondent: Paul E. Waring, Esq.

Docket Entries

1952

Jul 10—Petition received and filed. Taxpayer notified. Fee paid.

Jul 15—Copy of petition served on General Counsel.

Aug 25—Answer filed by General Counsel.

Aug 25—Request for Hearing in Washington, D.C., filed by General Counsel.

Aug 27—Notice issued placing proceeding on Washington, D.C., calendar. Service of answer and request made.

Aug 29—Entry of appearance of Harry E. Karr as counsel filed.

1953

Aug 19—Motion to consolidate proceedings in docket numbers 42545, 50153 and 50154 for hearing and decision filed by taxpayer.

Dec 4—Hearing set Feb. 8, 1954, Washington, D.C.

1954

Jan 22—Motion for continuance filed by taxpayer. 1-25-54, granted.

May 7—Motion to remove from reserve calendar and to place on a special calendar at Washington, D.C., not later than June 15, 1954 before Judge Johnson and to reconsolidate with dockets 50153 and 50154 filed by petitioner. 5-13-54, copy served.

May 13—Hearing set May 19, 1954, Washington on petitioner's motion.

May 19—Hearing had before Judge Kern and Judge Johnson on petitioner's written motion to remove from reserve calendar and place on a special calendar and to reconsolidate with dockets 50153 and 50154. Respondent opposes motion.

May 19—Order that petitioner's motion is granted insofar as removing the case from the reserve calendar reconsolidating dockets 50153 and 50154, and placing on a special calendar before Judge Johnson. Petitioner's motion is denied insofar as it requests a hearing date not later than June 15, 1954; the above entitled case, consolidated as aforesaid with dockets 50153 and 50154, is set for hearing on the merits September 13, 1954, Washington, D. C., entered.

Jul 27—Motion to make more definite and certain filed by petitioner. Copy served 7-29-54.

Jul 29—Hearing set Aug. 11, 1954, Washington, D. C., on petitioner's motion.

Aug. 9—Transcript of Hearing 5-19-54 filed.

Aug. 11—Hearing had before Judge Baar on petitioner's motion to make more definite and certain. Granted.

Aug. 11—Order that petitioner's motion is granted and, with consent of counsel for petitioner, the statement by counsel for respondent into the record at the hearing is held to be in compliance with said motion as granted, entered.

Sep. 10—Motion to amend petition, amended petition lodged, filed by petitioner.

Sep. 13—Motion to amend petition granted, amended petition filed. Served on General Counsel 9-14-54.

Sep. 13—Hearing had before Judge Kern. Order: by agreement of counsel, continued to 10-18-54, Washington, D. C.

Sep. 13—Order that proceeding is continued for hearing on the merits at Washington, D. C., Oct. 18, 1954, entered.

Sep. 15—Hearing set Oct. 18, 1954, Washington, D. C.

Sep. 15—Petitioner's motion to consolidate dockets 42545, 50153, 50154 filed, 8-19-53 is granted.

Sep. 22—Order striking case from Oct. 18, 1954 calendar and resetting for further hearing Oct. 4, 1954 at Washington, entered.

Sep. 23—Answer to amended petition filed by General Counsel.

Sep. 20—Transcript of Hearing 9-13-54 filed.

Oct. 4—Hearing had before Judge Johnson on the merits. Further hearing, petitioner's motion for leave to file second amended petition in docket number 42545. Granted and served. Respondent allowed usual time to answer, additional stipulation of facts filed at hearing. Petitioner's brief due 12-6-54; respondent's brief due 2-4-55. Petitioner's reply brief due 3-4-55.

Oct. 7—Answer to second amended petition filed by General Counsel. 10-8-54, copy served.

Oct. 18—Transcript of Hearing 10-4-54 filed.

Nov. 5—Joint motion to correct transcript filed. Granted 11-8-54.

Dec. 3—Brief filed by taxpayer. Copy served.

1955

Feb. 4—Motion for extension to March 4, 1955 to file brief filed by General Counsel. 2-7-55, granted.

Mar. 2—Answer brief filed by General Counsel.

Mar. 31—Motion for extension to Apr. 25, 1955 to file reply brief filed by taxpayer. 4-6-55, granted.

Apr. 14—Reply brief filed by petitioner. Copy served.

Oct. 31—Findings of Fact and Opinion filed. Johnson J. Decision will be entered under Rule 50. 11-2-55, copy served.

Nov. 14—Order amending opinion entered.

Nov. 28—Motion for reconsideration filed by respondent. 2-1-56, denied.

Nov. 30—Petition to intervene for the purpose of filing two motions filed by John C. Knipp. 2-1-56, denied.

Nov. 30—Motion to reopen case for purpose of taking additional evidence lodged by John C. Knipp.

Nov. 30—Motion to reconsider findings and Opinion lodged by John C. Knipp.

1956

Mar. 13—Respondent's Computation filed.

Mar. 14—Hearing set April 4, 1956. (Rule 50)

Mar. 26—Petitioner's objections to respondent's Rule 50 computation filed. 3-27-56, served.

Apr. 4—Hearing before Judge Murdock, on settlement. Ordered, referred to Judge Johnson—uncontested.

Apr. 5—Decision entered, Judge Johnson, Div. 10.

Apr. 18—Motion to correct decision filed by petitioner. Denied 4-24-56. Served 4-25-56.

Apr. 24—Order vacating decision and decision entered, Judge Johnson, Div. 10.

Jun. 27—Petition for review by U.S. Court of Appeals, Fourth Circuit, filed by petitioner.

Jun. 27—Proof of service filed.

Jul. 5—Statement of points relied on with proof of service thereon filed.

Jul. 5—Designation of Contents of record with proof of service thereon filed, by petitioner.

Jul. 24—Order extending time for filing record on review and docketing petition for review to 9-25-56, entered.

Aug. 17—Cross petition for review filed by respondent.

Aug. 17—Notice of filing cross petition for review filed by respondent.

Aug. 23—Proof of service of cross petition for review filed. (Counsel)

Apr. 30—Proof of service of cross petition for review filed. (Petitioner)

Sept. 6—Statement of points, with statement of service thereon, filed by respondent.

Sept. 6—Designation of contents of record on review with statement of service thereon, filed by respondent.

Sept. 7—Counter-designation of contents of record on review with acknowledgment of service thereon, filed by petitioner.

Docket No. 50153

HOWARD F. KNAPP, Executor, *Petitioner*,

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

APPEARANCES—For Petitioner: Randolph E. Paul, Esq. (Deceased), Harry E. Kagr, Esq., Carolyn E. Agger, Esq., Julian M. Stern, Esq. For Respondent: Paul E. Waring, Esq.

Docket Entries

1953

Aug. 19—Petition received and filed. Taxpayer notified. Fee paid.

Aug. 20—Copy of petition served on General Counsel.

Aug. 19—Request for Circuit hearing in Washington, D.C., filed by taxpayer. 8-25-53, granted.

Aug. 19—Motion to consolidate proceedings in docket numbers 42545, 50153 and 50154 for hearing and decision filed by taxpayer.

Sep. 22—Answer filed by General Counsel.

Sep. 28—Copy of answer served on taxpayer, Washington, D. C.

Dec. 4—Hearing set Feb. 8, 1954, Washington, D. C.

1954

Feb. 8—Hearing had before Judge Johnson on merits, petitioner's motion to amend petition in docket number 50154, Granted and served. Motion to amend petition in #50154 and stipulation of facts with exhibits 1-A through 27AA filed at hearing. Petitioner's brief due 4-9-54; respondent's brief due 6-9-54. Petitioner's reply due 7-8-54.

Feb. 19—Transcript of Hearing 2-8-54 filed.

Apr. 2—Joint motion to correct transcript filed. 4-5-54, granted.

Apr. 8—Brief filed by taxpayer. Copy served 4-8-54.

May 20—Order that proceeding is hereby reopened for further hearing and reconsolidated with dockets 50154 and 42545, and placed for further hearing at Washington, D. C., on 9-13-54, entered.

Sep. 13—Hearing had before Judge Kern, by agreement of counsel—continued to Oct. 18, 1954, Washington, D. C.

Sep. 13—Order that proceeding is continued for hearing on the merits Oct. 18, 1954 at Washington, D. C., entered.

Sep. 15—Hearing set 10-18-54; Washington, D. C.

Sep. 15—Petitioner's motion to consolidate dockets 42545, 50153, 50154 filed 8-19-53 is granted.

Sep. 20—Transcript of Hearing 9-13-54 filed.

Sep. 22—Order striking case from Oct. 18, 1954 calendar and resetting for further hearing Oct. 4, 1954, Washington, D. C., entered.

Oct. 4—Hearing had before Judge Johnson on the merits, additional stipulation of facts filed at hearing. Petitioner's brief due 12-6-54; respondent's brief due 2-4-55. Petitioner's reply brief due 3-4-55.

Oct. 18—Transcript of Hearing 10-4-54 filed.

Nov. 5—Joint motion to correct transcript filed: 11-8-54 granted.

Dec. 3—Brief filed by taxpayer. Copy served.

1955

Feb. 4—Motion for extension to March 4, 1955 to file brief filed by General Counsel. 2-7-55, granted.

Mar. 2—Answer brief filed by General Counsel.

Mar. 31—Motion for extension to April 25, 1955 to file reply brief filed by taxpayer. 4-6-55, granted.

Apr. 14—Reply brief filed by petitioner. Copy served.

Oct. 31—Findings of fact and opinion filed. Johnson J. Decision will be entered under Rule 50. 11-2-55, copy served.

Nov. 14—Order amending opinion entered.

Nov. 28—Motion for reconsideration filed by respondent. 2-1-56, denied.

Nov. 30—Petition to intervene for the purpose of filing two motions filed by John C. Knipp. 2-1-56, denied.

Nov. 30—Motion to reopen case for the purpose of taking additional evidence lodged by John C. Knipp.

Nov. 30—Motion to reconsider findings and opinion lodged by John C. Knipp.

1956

Mar. 13—Agreed computation filed.

Apr. 5—Decision entered, Judge Johnson, Div. 10.

Apr. 24—Order vacating decision and decision entered, Judge Johnson, Div. 10. Served 4-25-56.

Apr. 30—Notice to send future notices to Mrs. Carolyn E. Agger at 1614 Eye Street, N.W., Washington, D. C., filed by Harry E. Karr.

Jun. 27—Petition for review by U.S. Court of Appeals, Fourth Circuit, filed by petitioner.

Jun. 27—Proof of service filed.
Jul. 5—Statement of points relied on with proof of service thereon filed.
Jul. 5—Designation of contents of record with proof of service thereon filed by petitioner.
Jul. 24—Order extending time for filing the record on review and docketing the petition for review to 9-25-56, entered. Served 7-25-56.

Docket No. 50154

ESTATE OF FRANK H. KNIPP, Deceased, HOWARD F. KNIPP, Executor, *Petitioner*,

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

APPEARANCES—For Petitioner: Randolph E. Paul, Esq. (Deceased), Harry E. Karr, Esq., Carolyn E. Agger, Esq., Julian N. Stern, Esq. For Respondent: Paul E. Waring, Esq.

Docket Entries

1953

Aug. 19—Petition received and filed. Taxpayer notified. Fee paid.
Aug. 20—Copy of petition served on General Counsel.
Aug. 19—Request for Circuit hearing in Washington, D.C., filed by taxpayer. 8-25-53, Granted.
Aug. 19—Motion to consolidate proceedings in docket numbers 42545, 50153, and 50154 for hearing and decision filed by taxpayer.
Sep. 22—Answer filed by General Counsel.
Sep. 22—Request for place of hearing at Washington, D.C., filed by General Counsel.
Sep. 28—Copy of answer and request served on taxpayer, Washington, D.C.
Dec. 4—Hearing set Feb. 8, 1954, Washington, D.C.

1954

Feb. 8—Hearing had before Judge Johnson on merits, petitioner's motion to amend petition in docket 50154. Granted. Copy served. Motion to amend petition in docket 50154 and stipulation of facts and exhibits 1-A thru 27-AA filed at hearing. Petitioner's Brief due Apr. 9, 1954; respondent's Brief due 6-9-54. Petitioner's Reply due July 8, 1954.

Feb. 19—Transcript of Hearing 2-8-54 filed.

Apr. 2—Joint motion to correct transcript filed. 4-5-54, granted.

Apr. 8—Brief filed by taxpayer. Copy served 4-9-54.

May 20—Order that Proceeding is hereby reopened for further hearing and reconsolidated with dockets 50153 and 42545, and placed for further hearing at Washington, D. C., on 9-13-54, entered.

Sep. 13—Hearing had before Judge Kern, Order, by agreement of counsel, continued to Oct. 18, 1954, at Washington, D.C.

Sep. 13—Order that proceedings are continued for hearing on the merits at Washington, D.C., Oct. 18, 1954, entered.

Sep. 15—Hearing set 10-18-54, Washington, D.C.

Sep. 15—Petitioner's motion to consolidate dockets 42445, 50153, 50154 filed 8-19-53 is granted.

Sep. 20—Transcript of Hearing 9-13-54 filed.

Sep. 22—Order striking case from Oct. 18, 1954 calendar and resetting for further hearing Oct. 4, 1954 Washington, entered.

Oct. 4—Hearing had before Judge Johnson on the merits, additional stipulation of facts filed at hearing. Petitioners brief due 12-6-54; respondent's brief due 2-4-55. Petitioner's reply brief due 3-4-55.

Oct. 18—Transcript of Hearing 10-4-54 filed.

Nov. 5—Joint motion to correct transcript filed 11-8-54, granted.

Dec. 3—Brief filed by taxpayer. Copy served.

1955

Feb. 4—Motion for extension to March 4, 1955 to file brief filed by General Counsel. 2-7-55, granted.

Mar. 2—Answer brief filed by General Counsel.

Mar. 31—Motion for extension to April 25, 1955 to file reply brief filed by taxpayer. 4-6-55, granted.

Apr. 14—Reply brief filed by petitioner. Copy served.

Oct. 31—Findings of Fact and Opinion filed. Johnson J. Decision will be entered under Rule 50. 11-2-53, copy served.

Nov. 14—Order amending opinion entered.

Nov. 28—Motion for reconsideration filed by respondent. 2-1-56, denied.

Nov. 30—Petition to intervene for the purpose of filing two motions filed by John C. Knipp. 2-1-56, denied.

Nov. 30—Motion to reopen case for the purpose of taking additional evidence lodged by John C. Knipp.

Nov. 30—Motion to reconsider findings and opinion lodged by John C. Knipp.

1956

Mar. 13—Agreed computation filed.

Apr. 5—Decision entered, Judge Johnson, Div. 10.

Apr. 24—Order vacating decision and decision entered, Judge Johnson, Div. 10.

Jun. 27—Petition for review by U.S. Court of Appeals, Fourth Circuit, filed by petitioner.

Jun. 27—Proof of service filed.

Jul. 5—Statement of points relied on with proof of service thereon filed.

Jul. 5—Designation of contents of record with proof of service thereon filed.

Jul. 24—Order extending time for filing the record on review and docketing the petition for review to 9-25-56, entered. Copy served 7-25-56.

Second Amended Petition Docket No. 42545

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:U A:EG-13262-Maryland) dated May 16, 1952, and as a basis of his proceeding alleges as follows:

1. The petitioner is the executor of the last will and testament of Frank H. Knipp (hereinafter called the decedent). His principal office is at 600 South Pulaski Street, Baltimore 23, Maryland. The return for the period here involved was filed with the collector for the district of Maryland.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on May 16, 1952.

3. The Commissioner determined a deficiency in the estate tax of the above-named estate in the amount of $120,980.52. Substantially the entire amount of the deficiency is in controversy.

4. The determination of tax set forth in the notice of deficiency is based upon the following errors:

(a) The Commissioner erroneously included in the gross taxable estate of the decedent the proceeds from insurance policies in the amount of $90,512.32.

(b) If this Court should determine that any part of the insurance proceeds are includible in the gross taxable estate of the decedent, then the Commissioner erroneously included the proceeds of the policies in an amount in excess of the ratio of the allocable portion, based on the decedent's partnership interest, of the premiums paid by John C. Knipp & Sons after January 10, 1941, to the total premiums paid on the policies.

(c) If this Court should determine that any part of the insurance proceeds are includible in the gross taxable

estate of the decedent, then the Commissioner erroneously failed to reduce the gross taxable estate by an allocable amount of the cash surrender value of the insurance policies, including the policies on the life of Howard F. Knipp, previously included in the estate.

(d) The Commissioner erroneously determined the value of the decedent's interest in the partnership of John C. Knipp & Sons to be $281,180.90.

(e) We have been informed that the Commissioner included in his value of $281,180.90 for the partnership interest an amount of $13,516.55, which represents interest received on an income tax refund of $55,194.94. If this is true, then the Commissioner erroneously determined that the entire amount of the interest was includible in the decedent's taxable estate.

(f) The Commissioner erroneously failed to reduce the value of the decedent's interest in John C. Knipp & Sons by $4,328.34, representing the decedent's share of John C. Knipp & Sons' liability to the United States Maritime Commission for interest for the fiscal year ended January 31, 1947, on an overpayment of $185,500.

(g) The Commissioner erroneously failed to recognize the validity of the duly executed partnership agreement of John C. Knipp & Sons.

(h) The Commissioner erroneously failed to allow the deduction of additional debts of the decedent in the amount of $151,191.71.

(i) The Commissioner erroneously failed to allow the deduction of all attorneys' fees, expenses, and disbursements incurred in the administration of the estate, including attorneys' fees and related expenses and disbursements incurred by the petitioner in this proceeding or on a review thereof.

(j). The Commissioner erroneously failed to determine that the petitioner overpaid the estate tax due from the decedent's estate.

5. The facts upon which the petitioner relies as the basis for this proceeding are as follows:

(a) The petitioner is the executor of the last will and testament of the decedent, who died on November 21, 1947.

(b) At the time of his death the decedent was a member of John C. Knipp & Sons, a co-partnership having its principal place of business at 600 South Pulaski Street, Baltimore, Maryland. The nature of the partnership business is that of interior woodwork manufacturers.

(c) John C. Knipp & Sons was the successor to a partnership originally formed in 1868. The partnership was conducted under a partnership agreement entered into on July 7, 1943, by Frank H. Knipp, Howard F. Knipp, and John C. Knipp. On August 1, 1945, John C. Knipp withdrew from active participation in the partnership by mutual agreement. No final settlement of his capital interest in the partnership has yet been made.

(d) At the time of the decedent's death, the partnership was the owner of eleven insurance policies on his life.

(e) Under the partnership agreement, neither the decedent nor his estate had any interests in the proceeds of the life insurance policies.

(f) The cash surrender value of the partnership insurance on the decedent's life as of the close of the partnership's last fiscal year prior to the death of the decedent was $48,175.69.

(g) The cash surrender value of the partnership insurance on the life of Howard F. Knipp, as of the close of the partnership's last fiscal year prior to the death of the decedent, was $11,542.79.

(h) On April 20, 1946, the United States Maritime Commission made an overpayment of $185,500 to John C. Knipp & Sons. This amount was refunded to the Maritime Commission in September and October, 1947. In a Final Settlement Agreement reached in 1951 John C. Knipp & Sons agreed to pay $16,005.25 as interest on the $185,500 between the date of receipt in 1946 and the dates of repayment in 1947. Of this amount $8,656.57 was incurred for the period between April 20, 1946 and January 31, 1947. One-half of this amount, or $4,328.34, was chargeable to the decedent's capital interest as of February 1, 1947. This amount of $4,328.34 further serves to reduce the decedent's capital interest in John C. Knipp & Sons as shown in the estate tax return filed.

(i) As of the date of his death Frank H. Knipp owed additional debts not listed on the estate tax return, which have been paid subsequent to his death, as follows:

(1) Federal income tax deficiency for 1945 and 1946	$ 24,181.90
(2) Interest prior to date of death on 1946 deficiency	967.24
(3) Federal income tax for 1947	108,043.55
(4) Federal income tax for 1948	8,881.70
(5) State income tax liabilities	9,114.67
(6) Alexander & Alexander for insurance	3.55
	$151,191.71

(j) In addition to Frank H. Knipp's income tax for 1947 already paid by his estate, a deficiency of $18,500.38 has been asserted against Frank H. Knipp in Docket No. 50454.

(k) In addition to the funeral and administration expenses deducted on the estate tax return, the estate has incurred and paid funeral expenses of $50 for cemetery fees and $153 for a marker for Frank H. Knipp's grave, and administration expenses of $1,902.33 for lawyers' fees,

and $2,924.02 for accountants' fees. The estate has incurred and will incur additional attorneys' and accountants' fees, expenses, and disbursements in the further administration of the estate, including attorneys' fees and related expenses and disbursements incurred in this proceeding or in a review thereof.

WHEREFORE, the petitioner prays that this Court may hear the proceeding and determine that there is no deficiency in the estate tax due from the decedent's estate; that the petitioner overpaid the estate tax due from the decedent's estate; and that this Court may grant such other and further relief as the nature of the case may warrant.

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Answer to Second Amended Petition Docket No. 42545

Comes now the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the second amended petition in the above-entitled proceeding admits, denies, and alleges as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the second amended petition.

3. Admits that the deficiency in controversy is estate tax in the amount of $120,980.52. Denies the remaining allegations contained in paragraph 3 of the second amended petition.

4 (a) to (j), inclusive. Denies that the Commissioner erred as alleged in subparagraphs (a) to (j), inclusive, of paragraph 4 of the second amended petition.

5 (a) and (b). Admits the allegations contained in subparagraphs (a) and (b) of paragraph 5 of the second amended petition.

5 (c) to (i), inclusive. Denies the allegations contained in subparagraphs (c) to (i), inclusive, of paragraph 5 of the second amended petition.

5 (j). Admits that a deficiency in income tax of $18,500.38 was asserted against the estate of Frank H. Knipp, deceased, for the taxable period January 1, 1947, to November 21, 1947, as stated in Docket No. 50154. Denies the remaining allegations contained in subparagraph (j) of paragraph 5 of the second amended petition.

5 (k). Denies the allegations contained in subparagraph (k) of paragraph 5 of the second amended petition.

6. Denies generally and specifically each and every allegation of the second amended petition not hereinabove expressly admitted, qualified, or denied.

WHEREFORE, it is prayed that the appeal with respect to the errors alleged in the second amended petition be denied.

(Signed) Daniel A. Taylor, PAB
Daniel A. Taylor
Chief Counsel
Internal Revenue Service

Of Counsel:

Cecil H. Haas,
Regional Counsel.
Philip A. Bayer,
Assistant Regional Counsel.
Paul E. Waring,
Special Attorney,
Internal Revenue Service.

PEW:ips 10-5-54

Petition Docket No. 59153

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (ADC: Ap:BAL Bal:JRG) dated June 2, 1953, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual residing at 204 Goodwood Gardens, Baltimore 10, Maryland. The return for the period here involved was filed with the collector for the district of Maryland.

2. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner on June 2, 1953.

3. The deficiency as determined by the Commissioner is in income tax for the calendar year ended December 31, 1947, in the amount of $351,892.70. Substantially the entire amount of the deficiency is in dispute.

4. The determination of tax set forth in the notice of deficiency is based upon the following error:

(a) The Commissioner erroneously included in the petitioner's income his distributive share of the income from the partnership of John C. Knipp & Sons for the fiscal year ended January 31, 1948.

5. The facts upon which the petitioner relies as the basis for this proceeding are as follows:

(a) During the year in question the petitioner was a member of John C. Knipp & Sons, a partnership engaged in the business of interior woodwork manufactu[illegible]

(b) John C. Knipp & Sons was the successor to a partnership originally formed in 1868. The partnership was conducted under a partnership agreement entered into on July 7, 1943, by Frank H. Knipp, Howard F. Knipp, and John C. Knipp. (A copy of this agreement is attached hereto and marked "Exhibit B.") On August 1, 1945, John C. Knipp withdrew from active participation in the partnership by mutual agreement. However, his capital interest remains at risk in the firm.

(c) John C. Knipp & Sons kept its books and filed its returns on the basis of a fiscal year ending on January 31st. The petitioner kept his books and filed his returns on the basis of the calendar year.

(d) On November 21, 1947, Frank H. Knipp, one of the partners in John C. Knipp & Sons, died. However, the partnership and the partnership business were not terminated by his death. In conformity with Maryland law they continued beyond December 31, 1947, for the purpose of winding up the partnership affairs.

WHEREFORE, the petitioner prays that this Court may hear the proceeding and determine that the Commissioner has

overstated any deficiency in the income tax of the petitioner for the calendar year 1947.

s/ Randolph Paul
1614 Eye Street, N.W.
Washington, D. C.

s/ Harry E. Karr
Suite 1502 Fidelity Building
Baltimore, Maryland

s/ Carolyn E. Agger
1614 Eye Street, N.W.
Washington, D. C.

s/ Julian N. Stern
1614 Eye Street, N.W.
Washington, D. C.
Attorneys for the petitioner.

EXHIBIT A

June 2, 1953

Mr. Howard F. Knipp,
204 Goodwood Gardens,
Baltimore 10, Maryland

Dear Mr. Knipp:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1947 discloses a deficiency of $351,892.70 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days

you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to this office. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

T. Coleman Andrews,
Commissioner,

By: (Signed) Herbert D. Smith
Assistant District Commissioner

Enclosures:

Statement
Form 1276
Agreement Form

STATEMENT

Mr. Howard F. Knipp
204 Goodwood Gardens
Baltimore 10, Maryland

Tax Liability for the taxable year ended December 31, 1947

INCOME TAX

Year	*Deficiency*
1947	$351,892.70

In making this determination of your income tax liability, careful consideration has been given to the report of exam-

ination dated May 18, 1951; to your protest dated August 10, 1951; and to the statements made at the conferences held on October 22, 1951, January 28, 1952, June 9, 1952 and January 15, 1953.

A copy of this letter and statement has been mailed to your representative, Mr. Randolph E. Paul, 1614 Eye Street, N.W., Washington 6, D. C., in accordance with the authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1947

Adjustment To Net Income

Net income as disclosed by return		$113,794.09
Unallowable deductions and additional income		
(a) Dividends	$ 233.40	
(b) Capital gain	$ 2,771.38	
(c) Partnership—John C. Knipp & Sons	$373,810.77	
(d) Partnership—Knipp Aviation Industries	$ 39,766.55	
		$416,582.10
Total		$530,376.19
Nontaxable income and additional deductions		
(e) Taxes	$ 254.95	
(f) Contributions	$ 6,725.00	
		$ 6,979.95
Net income adjusted		$523,396.24

Explanation of Adjustments

(a) Income has been increased in the amount of $233.40 for dividends not reported in the return.

(b) Capital gain has been increased as follows:

Gain on sale of farm land held jointly with Frank H. Knipp:

Net proceeds 5-15-47	$41,968.00	
Cost—July 23, 1945	31,030.45	
Gain	$10,937.55	
Your one-half share	$ 5,468.78	
Taken into account 50%		$ 2,734.39
Capital gain—John C. Knipp & Sons partnership		$ 713.49
Capital gain—Knipp Aviation partnership		$ 16.70
Tofal		$ 3,464.58
Less: Short term loss—railroad bonds		$ 336.74
		$ 3,127.84
Net long term capital gain as adjusted		$ 3,127.84
Reported in return		356.46
Increase		$ 2,771.38

(c) Your income from the partnership, John C. Knipp & Sons, has been increased as follows:

Net income per partnership return (Form 1065 for fiscal year ended 1-31-47)		$309,027.21
Unallowable deductions and additional income:		
(1) Gross profit adjustment	$19,809.33	
(2) Bond interest	50.00	
(3) Dividends	57.50	
(4) Depreciation	336.39	
(5) Travel expense	8,750.00	
(6) Advertising	600.00	$ 29,603.22
Total		$338,630.43
Nontaxable income and additional deductions:		
(7) Legal and accounting expense	$16,600.00	
(8) Vinson Act adjustment	5,042.68	
(9) Interest on Government obligations	7,068.50	
(10) Bad debts	76.72	
(11) Interest expense	8,656.67	$ 37,444.57
Net income adjusted		$301,185.86
Your distributive share (50%) f/y 1-31-47	$150,592.93	
Reported in return	$154,513.60	
Decrease	$ 3,920.67	

(1) Gross profit adjustment

Reported gross profit	$330,482.87
Corrected	350,292.20
Increase	$ 19,809.33

This adjustment results from correction of inventories due to contract termination in prior years and correction for partial billings applicable to subsequent years.

(2) Bond interest was understated $50.00 in the return.

(3) Dividend income was understated $57.50 in the return.

(4) Depreciation claimed in the return was excessive to the extent of $336.39.

(5) Travel expense claimed in the amount of $8,730.00 has been disallowed for lack of substantiation.

(6) Advertising expense claimed in the amount of $660.00 has been disallowed for lack of substantiation.

(7) Legal and accounting expense of $16,600.00 not claimed in return has been allowed as a deduction.

(8) Deduction is allowed for $5,042.68 excessive profit under the Vinson Act, allocable to fiscal year ended January 31, 1947, which has been refunded to the Maritime Commission.

(9) Interest on Government obligations as reported in the return has been reduced in the amount of $7,068.50. This interest which was received on disposal of the bonds was included in income previously for tax purposes on the accrual basis.

(10) Bad debt of $76.72 not claimed in return has been allowed as a deduction.

(11) Deduction has been allowed for accrued interest expense on advances received from the Maritime Commission.

Net income per partnership return (Form 1065 for fiscal year ended 1-31-48)		$450,158.91
Unallowable deductions and additional income:		
(1) Federal excise tax	$ 139.15	
(2) Depreciation	4,899.85	
(3) Travel expense	3,500.00	$ 8,539.00
Total		$458,697.91
(4) Interest expense	$ 7,348.58	
(5) Interest income	50.00	
(6) Vinson Act adjustment	10,277.09	
(7) Legal expense	2,500.00	
(8) Job costs	3,869.85	$ 24,045.43
Net income adjusted		$434,652.48

It is held that the death of Frank H. Knipp on November 21, 1947, dissolved the partnership of Frank H. Knipp and Howard F. Knipp, trading as John C. Knipp & Sons as of that date and terminated the partnership accounting year at that date for Federal income tax purposes. Accordingly, partnership income for the period February 1, 1947 to November 21, 1947, and sole proprietorship income from November 22, 1947 to December 31, 1947, has been determined as follows:

Partnership income 2-1 to 11-21-47 (9-7-10) months	$351,344.09
Less: Allocable to Frank H. Knipp	20,700.00
Balance—Howard F. Knipp	$330,644.09
Income from 11-21 to 12-31-47 (1-3-10) months	47,087.35
Total	$377,731.44
Reported in your return	—0—
Increase	$377,731.44

Summary

Increase in your partnership and sole proprietorship income 2-1-47 to 12-31-47 above	$377,731.44
Decrease in your partnership income from partnership fiscal year ended 1-31-47	3,920.67
Net increase	$373,810.77

(1) Federal excise taxes have been disallowed in the amount of $139.15.

(2) Depreciation claimed in the return was excessive to the extent of $4,899.85.

(3) Travel expense claimed in the amount of $3,500.00 has been disallowed for lack of substantiation.

(4) Deduction has been allowed for accrued interest expense on advances received from the Maritime Commission.

(5) Bond interest which accrued in prior years has been eliminated.

(6) Deduction is allowed for $10,277.00 excessive profit under the Vinson Act which has been refunded to the Maritime Commission.

(7) Deduction has been allowed for legal expense of $2,500.00 not claimed in return.

(8) Additional accrued job costs not claimed in the return have been allowed as a deduction.

(d). Your income from the partnership, Knipp Aviation Industries, has been increased as follows:

Net income per partnership return (Form 1065 for calendar year 1947)		$ 6,486.15
Unallowable deductions and additional income:		
(1) Cost of new oil burners	$2,963.00	
(2) Depreciation	639.79	
(3) Inventory	4,000.00	$ 7,602.79
Total		$ 14,088.94

Nontaxable income and additional deductions:

(4) Expenses C-46 plane	$ 4,000.00
Net income adjusted	$ 10,088.94

It is held that the death of Frank H. Knipp on November 21, 1947, dissolved the partnership of Frank H. Knipp and Howard F. Knipp, trading as Knipp Aviation Industries, as of that date and terminated the partnership accounting year at that date for Federal income tax purposes. Accordingly, partnership income for the period January 1, 1947 to November 21, 1947 and sole proprietorship income from November 22, 1947 to December 31, 1947 has been determined as follows:

Partnership and sole proprietorship income for the year 1947, as above	$ 10,088.94
Less—Frank H. Knipp—share 1-1 to 11-21-47	3,333.33
Your share	$ 6,755.61
Reported in return—Loss	$ 33,010.94
Increase	$ 39,766.55

(1) Cost of new oil burners represents a capital expenditure and deduction claimed therefor is disallowed.

(2) Depreciation claimed in return was excessive to the extent of $639.79.

(3) Closing inventory has been increased for the value of rugs and blankets erroneously credited to cost of operations of C-46 plane. See adjustment (4) following.

(4) The expense of operations of C-46 plane has been increased due to elimination of erroneous credit for inventory. See adjustment 3 above.

(e) An additional deduction for taxes paid has been allowed as follows:

Real estate tax—Carrolland Farm	$ 171.40
North Carolina income tax	91.05
Total	$ 262.45
Less:	
Federal excise tax unallowable	7.50
Net additional deduction	$ 254.95

(f) An additional deduction for contributions has been allowed as follows:

From John C. Knipp & Sons partnership f/y 1-31-47	$ 1,180.00
From John C. Knipp & Sons partnership period 2-1 to 11-21-47	$ 9,475.00
Through John C. Knipp & Sons 11-22 to 12-31-47	$ 625.00
Direct contributions	$ 1,129.00
Total	$ 12,409.00
Claimed per return	$ 5,684.00
Additional deduction	$ 6,725.00

Computation of Alternative Tax

Net income adjusted	$323,396.24

Less:	
Excess of net long-term capital gain over net short-term capital loss	3,127.84
Ordinary net income	$520,268.40
Less:	
Exemptions (3 x $500.00)	$ 1,500.00
Income subject to tentative tax	$519,768.40
Combined tentative normal tax and surtax	$446,899.24
Tax reduction: 5%	22,344.96
Partial tax	$424,554.28
50% of capital gain above	1,563.92
Alternative tax	$426,118.20

Computation of Income Tax

Net income adjusted	$523,396.24
Less:	
Exemptions (3 x $500.00)	1,500.00
Income subject to tentative tax	$521,896.24
Combined tentative normal tax and surtax	$449,745.58
Tax reduction: 5%	$ 22,487.28
Combined normal tax and surtax	$427,258.30
Alternative tax	$426,118.20
Income tax liability	$426,118.20
Income tax liability disclosed by return Account No. 3028585	$ 74,225.50
Deficiency of income tax	$351,892.70

EXHIBIT B

AGREEMENT OF CO-PARTNERSHIP, entered into this 7th day of July, 1943, by and between Frank H. Knipp, Howard F. Knipp and John C. Knipp, all being residents of Baltimore City in the State of Maryland.

WHEREAS, the said Frank H. Knipp, Howard F. Knipp and John C. Knipp have for many years past been engaged in the business of manufacturing interior woodwork, furniture, office fixtures, etc. and of buying and selling furniture and other merchandise to the business belonging, under the firm name of John C. Knipp & Sons.

NOW THIS AGREEMENT WITNESSETH: That the said parties hereto, for and in consideration of the premises and of the mutual covenants herein contained, and of One Dollar ($1.00) each to the other paid, the receipt whereof is hereby acknowledged, have mutually covenanted and agreed as follows:

One. The said business as heretofore carried on shall be continued as in past years, and shall be conducted under the firm name of John C. Knipp & Sons.

Two. The said partnership shall commence as of February 1, 1942 and shall continue for two (2) years.

Three. All of the assets, merchandise and personal property of every kind, including any real estate, now belonging to said co-partnership shall continue to be owned under the terms of this Agreement, also prior contribution of capital, which contribution of capital is herein designated as to the amounts of same, as invested by each of the partners is as follows:

a. That Frank H. Knipp has contributed to the capital said partnership the sum of One Hundred and Fifteen Thousand and Eighty-nine Dollars and Eighty-nine Cents ($115,089.89).

b. That Howard F. Knipp has contributed to the capital of said partnership the sum of Fifty Thousand Five Hundred and Fifty-four Dollars and Thirty-six Cents ($50,554.36).

c. That John C. Knipp has contributed to the capital of said partnership the sum of Thirty-five Thousand, Three Hundred and Fourteen Dollars and Eighty-eight Cents ($35,314.88).

Four. That irrespective of the capital contributed by each partner as in the aforegoing paragraph set forth, it is understood and agreed between the parties hereto that the profit and losses of the business are to be divided in the following proportions:

Frank H. Knipp	40%
Howard F. Knipp	40%
John C. Knipp	20%

Five. It is agreed by and between the parties hereto that there shall be kept at all times during the continuation of the co-partnership, just and true books of accounts, wherein shall be entered all money received, paid and expended in said business, as well as all goods and merchandise bought, manufactured and sold, by reason of or on account of said business and all matters and things whatsoever, to the business and management thereof belonging, to which books all of said partners may have access at any time.

The books of the firm shall be audited by a Certified Public Accountant and balanced on the first day of February in each year and the profits or losses credited to said partners in the proportions as above named.

Six. Neither partner shall at any time sign the firm name or pledge the firm's credit in any manner as surety or guarantor on any paper, bill, bond, note or draft, or other obligation whatsoever; neither partner shall assign, pledge or mortgage any of the partnership property, or his interest

therein, or do anything or permit any act whereby the firm's money, interests or property may be liable to seizure, attachment or execution.

Seven. Each partner shall faithfully do and administer each and every part of the work undertaken or taken charge of by him or by them solely for the profit and advantage of the partnership. The salaries payable for the term of this contract shall be:

Frank H. Knipp	$25,000.00 annually
Howard F. Knipp	$25,000.00 annually
John C. Knipp	$17,000.00 annually

Such salaries to be paid proportionately on a monthly basis. If any changes in these salaries are made by way of increase or decrease, such increase or decrease shall be uniform. Salaries may be changed, subject to the limitation hereinabove set forth by any two of the three partners.

Eight. It is mutually agreed between the parties hereto that any partner may at any time give written notice for dissolution of the partnership, but same shall be effective at the end of the current term only. Final dissolution of the partnership shall then immediately be completed at the expiration of that term in accordance with Paragraph Nine of this agreement. No notice for dissolution being given, (and such notice must be given at least thirty days before the expiration of any term), it is agreed that this particular agreement shall continue for one year after the date of expiration as set forth in Paragraph Two hereof and shall continue thereafter from year to year until such notice be given or unless terminated as immediately hereafter provided.

(b) If any partner shall be guilty of misconduct, including drinking during business hours, or whose conduct shall be inimical to the business, so as to render it impracticable for the parties to carry on the partnership business togeth-

er, then and in any such event, the offending partner may be expelled from the partnership by the majority vote of arbitrators to be appointed as hereinafter provided. Such arbitrators shall sit as a body to hear testimony of all partners and witnesses that may be summoned. In the event of arbitration, each partner may be represented by counsel.

(c) From and after his expulsion, such expelled partner shall not at any time solicit or perform work of any clients of the partnership, nor of any of the continuing partners, and shall not disclose to any firm, person or corporation the name of any client or clients, and such expelled partner shall not at any time use the firm name, either in conjunction with his own name or otherwise, nor use the words, "formerly of John C. Knipp & Sons," or any other combination of words containing the firm name. The provisions of this sub-section shall be operative for one year after date of expulsion.

(d) Upon expulsion of any partner, provided same is sustained by a majority of the arbitrators, the remaining partners will immediately pay to such expelled partner, upon the findings of a majority of the arbitrators the following:

1. The whole of his invested capital, less any impairment of capital (if same shall be found by arbitrators).

2. The value in cash of his capital investment and the same proportion of surplus or deficit as his percentage of profit or loss.

3. The arbitrators in arriving at what may be due under subparagraphs 1 and 2 are hereby bound in arriving at any sum due for either capital or profits, to take into consideration whether or not the firm has had all finished contracts with the United States Government or any department thereof, renegotiated, and if such contracts have not been renegotiated and finally settled, then and in that event

proper provision and allowances shall be made to cover any demands of the Government and also to finally repay any additional allowances of awards made to the firm in connection with any such contracts. The above provisions applying especially to work done by the firm with the Maritime Commission and the Navy Department of the United States Government.

4. Such expelled partner shall be paid his proportionate share of profits actually earned and received by the partnership, as defined in paragraph two of this agreement, less his proportionate part of actual known losses, and less his proportionate part of the taxes of whatever character, public dues, charges and assessments current and in arrears; such losses to be charged against capital and profits, whichever is necessary to absorb same.

5. No allowance shall be made for "Good Will" (or anticipated profits or losses).

6. If the expulsion of any partner shall be sustained by a majority of the arbitrators, and no impairment of capital is found, then and in such event, the expelled partner shall receive, in addition to the above, his salary in cash for the balance of the term.

(c) The partners hereto mutually agree that application to arbitrators shall be made only in the event that any disagreement arises between the parties in connection with a dissolution of the partnership, and that such arbitrators as hereinafter provided for to hear and rule upon any and all matters relating to such dissolution. However, it is not intended that dissolution be effected only through arbitration, but the co-partnership may also be terminated by agreement between the partners without recourse to arbitration, either upon expiration of any partnership term or to take effect prior thereto. It is further agreed that if any such agreement relating to dissolution of the partnership shall have been reduced to writing and signed by all the

partners none of them shall thereafter have any of the rights for arbitration as hereinbefore set forth.

Nine. Upon notice of dissolution of the partnership at the end of any term, or notice for the expulsion of a partner, arbitrators shall be appointed in the following manner:

(a) In event of written notice for dissolution of the partnership, the partner receiving such notice shall within five days appoint his arbitrator.

(b) The remaining partners shall be entitled to appoint one arbitrator.

(c) In the event of expulsion the partner expelled shall be entitled to appoint an arbitrator and the two remaining partners shall appoint one arbitrator.

(d) Each side shall espectively appoint arbitrators within five days after receiving notice from the other or others to make such appointments. Failure of the partner receiving notice and the partners sending notice, as the case may be, to appoint an arbitrator shall authorize the other or others to make an appointment. If such two arbitrators shall fail, or be unable to agree on a third arbitrator, then and in such event, the Chief Judge of the Supreme Bench of Baltimore City, upon application made by any partner hereto for that purpose, is hereby authorized and empowered to appoint such additional arbitrator.

(e) The award to be made by the arbitrators or a majority of them shall be made within twenty (20) days after the appointment of the third arbitrator and the award of a majority of such arbitrators, shall be binding and conclusive upon the parties hereto.

Ten. That upon the termination of the partnership by notice, and not for the misconduct of one of the partners, none of the parties who shall then be members of the partnership shall thereafter use or employ the firm name, but

each of said parties may advertise or announce that he was formerly a member of the partnership.

Eleventh. It is agreed among the partners hereto, anything in this agreement to the contrary notwithstanding, that in the event of any partner's death, the amount to the credit of said deceased partner on the firm's books on February 1, 1943, or on February 1st in any subsequent year, provided the partnership has run for twelve consecutive months; otherwise the date of settlement shall be as of the prior February 1st, less the amount of his withdrawals over salary, shall be paid to the Executors or Administrators of said deceased partner, and same shall be in full settlement of the deceased partner's interest in said partnership.

Twelve. It is further agreed between the parties hereto that this agreement shall bind the heirs, executors and administrators of each. It is understood that the witnesses hereto have been witnesses to the signatures of this agreement, and said witnesses have been permitted to read the contents of said agreement and are familiar with its terms.

As WITNESS the hands and seals of said partners, the day and year first above written. Executed in three original counterparts.

TEST:

(Signed) Frank H. Knipp (Seal)

(Signed) John J. West

(Signed) Howard F. Knipp (Seal)

(Signed) John J. West

(Signed) John C. Knipp (Seal)

(Signed) John J. West

Petitori Docket No. 50154

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (ADC:Ap:BAL Bal:JRG) dated June 2, 1953, and as a basis of his proceeding alleges as follows:

1. The petitioner is the executor of the last will and testament of Frank H. Knipp (hereinafter called the decedent), residing at 204 Goodwood Gardens, Baltimore, Maryland. The return for the period here involved was filed with the collector for the district of Maryland.

2. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner on June 2, 1953.

3. The deficiency as determined by the Commissioner is in income tax for the period from January 1, 1947 to November 21, 1947, in the amount of $18,500.36. Substantially the entire amount of the deficiency is in dispute.

4. The determination of tax set forth in the notice of deficiency is based upon the following error:

(a) The Commissioner erroneously included in the decedent's income his distributive share of the income from the partnership of John C. Knipp & Sons for the fiscal year beginning February 1, 1947.

5. The facts upon which the petitioner relies as the basis for this proceeding are as follows:

(a) The petitioner is the executor of the last will and testament of the decedent, who died on November 21, 1947.

(b) At the time of his death, the decedent was a member of John C. Knipp & Sons, a partnership engaged in the business of interior woodwork manufacture.

(c) John C. Knipp & Sons was the successor to a partnership originally formed in 1868. The partnership was

conducted under a partnership agreement entered into on July 7, 1943, by Frank H. Knipp, Howard F. Knipp, and John C. Knipp. (A copy of this agreement is attached hereto and marked "Exhibit B.") On August 1, 1945, John C. Knipp withdrew from active participation in the partnership by mutual agreement. However, his capital interest remains at risk in the firm.

(d) John C. Knipp & Sons kept its books and filed its returns on the basis of a fiscal year ending on January 31st. The decedent kept his books and filed his returns on the basis of the calendar year.

(e) The partnership of John C. Knipp & Sons and the partnership business were not terminated by the decedent's death. In conformity with Maryland law, they continued beyond December 31, 1947, for the purpose of winding up the partnership affairs.

WHEREFORE, the petitioner prays that this Court may hear the proceeding; and determine that there is no deficiency in the income tax of the decedent for the period from January 1, 1947, to November 21, 1947, and that the income tax of the decedent for the said period was overpaid.

Randolph Paul,
1614 Eye Street, N.W.
Washington, D. C.

Harry E. Karr,
Suite 1502 Fidelity Building,
Baltimore, Maryland

Carolyn E. Agger,
1614 Eye Street, N.W.
Washington, D. C.

Julian N. Stern,
1614 Eye Street, N.W.
Washington, D. C.
Attorneys for the petitioner.

EXHIBIT A

June 2, 1953

ADC:Ap:BAL
Bal:JRG
Estate of Frank H. Knipp, Deceased
Mr. Howard F. Knipp, Executor
204 Goodwood Gardens
Baltimore 10, Maryland

Dear Mr. Knipp:

You are advised that the determination of the income tax liability of Frank H. Knipp, deceased, for the taxable year January 1, 1947 to November 21, 1947, disclosed a deficiency of $18,500.36 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to this office. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest. Since the interest period terminates 30 days after receipt

of the form, or on the date of assessment, or on the day of payment, whichever is earlier.

Very truly yours,

T. Coleman Andrews
Commissioner
By: (Signed) Herbert D. Smith
Assistant District Commissioner

Enclosures

Statement
Form 1276
Agreement Form

STATEMENT

Estate of Frank H. Knipp, Deceased
Mr. Howard F. Knipp, Executor
204 Goodwood Gardens
Baltimore 10, Maryland

Tax Liability for the taxable year January 1, 1947 to November 21, 1947.

Income Tax	
Year	*Deficiency*
1-1-47 to 11-21-47	$18,500.36

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated May 18, 1951; to your protest dated August 10, 1951 and to the statements made at the conferences held on October 22, 1951, January 28, 1952, June 9, 1952 and January 15, 1953.

A copy of this letter and statement has been mailed to your representative, Mr. Harry E. Karr, 1502 Fidelity Building, Baltimore 1, Maryland in accordance with the

authority contained in the power of attorney executed by you.

Adjustment to Net Income

Net income as disclosed by return		$154,287.29
Unallowable deductions and additional income		
(a) Partnership, John C. Knipp and Sons	$16,779.32	
(b) Long term capital gain	2,754.68	
(c) Contributions	3,375.00	
(d) Short term capital gain	135.00	23,044.00
Total		$177,331.29
Nontaxable income and additional deductions		
(e) Taxes	$ 188.83	
(f) Dividends and interest	73.57	262.40
Net income adjusted		$177,068.89

Explanation of Adjustments

(a) Your income from the partnership, John C. Knipp and Sons, has been increased as follows:

Net income per partnership return (Form 1065 for fiscal year ended 1-31-47)		$309,027.21
Unallowable deductions and additional income:		
(1) Gross profit adjustment	$19,809.33	
(2) Bond interest	30.00	
(3) Dividends	37.50	
(4) Depreciation	336.39	
(5) Travel expense	8,750.00	
(6) Advertising	600.00	29,603.22
Total		$338,630.43

Nontaxable income and additional deductions:		
(7) Legal and accounting expense	$16,600.00	
(8) Vinson Act adjustment	5,042.68	
(9) Interest on Government obligations	7,068.50	
(10) Bad debts	76.72	
(11) Interest expense	8,656.67	37,444.57
Net income adjusted		$801,185.86
Your distributive share (50%) F.Y. 1-31-47		$150,592.93
Reported in return		154,513.61
Decrease		$ 3,920.68
(1) Gross profit adjustment		
Reported gross profit	$330,482.87	
Corrected	350,292.20	
Increase	$19,809.33	

This adjustment results from correction of inventories due to contract termination in prior years and correction for partial billings applicable to subsequent years.

(2) Bond interest was understated $50.00 in the return.

(3) Dividend income was understated $57.50 in the return.

(4) Depreciation claimed in the return was excessive to the extent of $336.39.

(5) Travel expense claimed in the amount of $8,750.00 has been disallowed for lack of substantiation.

(6) Advertising expense claimed in the amount of $600.00 has been disallowed for lack of substantiation.

(7) Legal and accounting expense of $16,600.00 not claimed in return has been allowed as a deduction.

(8) Deduction is allowed for $5,042.68 excessive profit under the Vinson Act, allocable to fiscal year ended January 31, 1947, which has been refunded to the Maritime Commission.

(9) Interest on Government obligations as reported in the return has been reduced in the amount of $7,068.50. This interest which was received on disposal of the bonds was included in income previously for tax purposes on the accrual basis.

(10) Bad debt of $76.72 not claimed in return has been allowed as a deduction.

(11) Deduction has been allowed for accrued interest expense on advances received from the Maritime Commission.

Your distributive share of income from partnership for period 2-1-47 to 11-21-47—in accordance with partnership agreement (see explanation below)	$ 20,700.00
Reported in your return	—0—
Increase	$ 20,700.00

Summary

Increase in partnership income for period 2-1-47 to 11-21-47 above	$ 20,700.00
Less: Decrease in partnership income for fiscal year ended January 31, 1947 above	3,920.68
Net increase in partnership income	$ 16,779.32

It is held that the death of Frank H. Knipp on November 21, 1947 dissolved the partnership of Frank H. Knipp and Howard E. Knipp, trading as John C. Knipp and Sons as of that date and terminated the partnership accounting year at that date for Federal income tax purposes. Accordingly, your share of partnership income, represented by salary of $20,700.00 from February 1, 1947 to November 21, 1947, in

accordance with partnership agreement, is taxable to you in the year 1947.

(b) Long term capital gain has been increased as follows:

Gain on sale of farm land held jointly with Howard K. Knipp:		
Net proceeds 5-15-47	$11,968.00	
Cost—July 23, 1945	31,030.45	
Gain	$10,937.55	
Your one-half share	$ 5,468.78	
Taken into account 50%		$ 2,734.39
Capital Gain—John C. Knipp & Sons—partnership		713.49
Total		$ 3,447.88
Reported in return		693.20
Increase		$ 2,754.68

(c) Contributions have been disallowed as follows:

Deducted per return		$ 4,660.00
As corrected:		
Through John C. Knipp and Sons partnership—fiscal year 1-31-47	$ 1,180.00	
Direct contributions	$ 105.00	1,285.00
Disallowed		$ 3,375.00

(d) Adjustment is made for short term capital gain not reported in return:

Selling price 300 shares stock—2-25-47		$ 2,136.00
Cost 11-25-46		2,001.00
Short term capital gain		$ 135.00

(g) An additional deduction for taxes paid has been allowed as follows:

Real estate taxes—Carrolland Farm		$ 171.40
North Carolina income tax		84.49
Total		$ 255.89
Less:		
Federal excise taxes not allowable	$ 7.50	
Real estate taxes on lot not paid until subsequent year	59.56	67.06
Net additional deduction		$ 188.83

(f) Dividends and interest income reported in return have been decreased as follows:

Dividends reported	$ 190.57	
Interest reported	283.64	
Total	$ 474.21	
Dividends and interest corrected	400.64	
Adjustment	$ 73.57	

Computation of Alternative Tax

Net income adjusted	$177,068.89
Less: Excess of net long-term capital gain over net short term capital loss	3,447.88
Ordinary net income	$173,621.01
Less: Exemptions (2 x $500.00)	1,000.00
Income subject to tentative tax	$172,621.01
Combined tentative normal tax and surtax	$132,178.91
Tax reduction: 5%	6,608.94
Partial tax	$125,569.97
50% of capital gain above	1,723.94
Alternative tax	$127,293.91

Computation of Income Tax

Net income adjusted	$177,068.89
Less: Exemptions (2 x $500.00)	1,000.00
Income subject to tentative tax	$176,068.89
Combined tentative normal tax and surtax	$135,282.00
Tax reduction: 5%	6,764.10
Combined normal tax and surtax	$128,517.90
Alternative tax	$127,293.91
Income tax liability	$127,293.91
Income tax liability disclosed by return Account No. 3024590	108,793.55
Deficiency of income tax	$ 18,500.36

EXHIBIT B

AGREEMENT OF CO-PARTNERSHIP, entered into this 7th day of July, 1943, by and between Frank H. Knipp, Howard F. Knipp and John C. Knipp, all being residents of Baltimore City in the State of Maryland.

WHEREAS, the said Frank H. Knipp, Howard F. Knipp and John C. Knipp have for many years past been engaged in the business of manufacturing interior woodwork, furniture, office fixtures, etc., and of buying and selling furniture and other merchandise to the business belonging, under the firm name of John C. Knipp & Sons.

NOW, THIS AGREEMENT WITNESSETH: That the said parties hereto, for and in consideration of the premises and of the mutual covenants herein contained, and of One Dollar ($1.00) each to the other paid, the receipt whereof is hereby acknowledged, have mutually covenanted and agreed as follows:

One. The said business as heretofore carried on shall be continued as in past years, and shall be conducted under the firm name of John C. Knipp & Sons.

Two. The said partnership shall commence as of February 1, 1942 and shall continue for two (2) years.

Three. All of the assets, merchandise and personal property of every kind, including any real estate, now belonging to said co-partnership shall continue to be owned under the terms of this Agreement, also prior contribution of capital, which contribution of capital is herein designated as to the amounts of same, as invested by each of the partners is as follows:

a. That Frank H. Knipp has contributed to the capital said partnership the sum of One Hundred and Fifteen Thousand and Eighty-nine Dollars and Eighty-nine Cents ($115,089.89).

b. That Howard F. Knipp has contributed to the capital of said partnership the sum of Fifty Thousand Five Hundred and Fifty-four Dollars and Thirty-six Cents ($50,554.36).

c. That John C. Knipp has contributed to the capital of said partnership the sum of Thirty-five Thousand, Three Hundred and Fourteen Dollars and Eighty-eight Cents ($35,314.88).

Four. That irrespective of the capital contributed by each partner as in the aforegoing paragraph set forth, it is understood and agreed between the parties hereto that the profit and losses of the business are to be divided in the following proportions:

Frank H. Knipp	40%
Howard F. Knipp	40%
John C. Knipp	20%

Five. It is agreed by and between the parties hereto that there shall be kept at all times during the continuation of the co-partnership, just and true books of accounts, wherein shall be entered all money received, paid and expended in said business, as well as all goods and merchandise bought, manufactured and sold, by reason of or on account of said business and all matters and things whatsoever, to the business and management thereof belonging, to which books all of said partners may have access at any time.

The books of the firm shall be audited by a Certified Public Accountant and balanced on the first day of February in each year and the profits or losses credited to said partners in the proportions as above named.

Six. Neither partner shall at any time sign the firm name or pledge the firm's credit in any manner as surety or guarantor on any paper, bill, bond, note or draft, or other obligation whatsoever; neither partner shall assign, pledge or mortgage any of the partnership property, or his inter-

est therein, or do anything or permit any act whereby the firm's money, interests or property may be liable to seizure, attachment or execution.

Seven. Each partner shall faithfully do and administer each and every part of the work undertaken or taken charge of by him or by them solely for the profit and advantage of the partnership. The salaries payable for the term of this contract shall be:

Frank H. Knipp	$25,000 annually
Howard E. Knipp	$25,000 annually
John C. Knipp	$15,000 annually

Such salaries to be paid proportionately on a monthly basis. If any changes in these salaries are made by way of increase or decrease, such increase or decrease shall be uniform. Salaries may be changed, subject to the limitation hereinabove set forth by any two of the three partners.

Eight. It is mutually agreed between the parties hereto that any partner may at any time give written notice for dissolution of the partnership, but same shall be effective at the end of the current term only. Final dissolution of the partnership shall then immediately be completed at the expiration of that term in accordance with Paragraph Nine of this agreement. No notice for dissolution being given, (and such notice must be given at least thirty days before the expiration of any term), it is agreed that this particular agreement shall continue for one year after the date of expiration as set forth in Paragraph Two hereof and shall continue thereafter from year to year until such notice be given or unless terminated as immediately hereafter provided:

(b) If any partner shall be guilty of misconduct, including drinking during business hours, or whose conduct shall be inimical to the business, so as to render it impracticable for the parties to carry on the partnership business to

gether. Then and in any such event, the offending partner may be expelled from the partnership by the majority vote of arbitrators to be appointed as hereinafter provided. Such arbitrators shall sit as a body to hear testimony of all partners and witnesses that may be summoned. In the event of arbitration, each partner may be represented by counsel.

(c) From and after his expulsion, such expelled partner shall not at any time solicit or perform work of any clients of the partnership, nor of any of the continuing partners, and shall not disclose to any firm, person, or corporation the name of any client or clients, and such expelled partner shall not at any time use the firm name, either in conjunction with his own name or otherwise, nor use the words, "formerly of John C. Knipp & Sons," or any other combination of words containing the firm name. The provisions of this sub-section shall be operative for one year after date of expulsion.

(d) Upon expulsion of any partner, provided same is sustained by a majority of the arbitrators, the remaining partners will immediately pay to such expelled partner, upon the findings of a majority of the arbitrators the following:

1. The whole of his invested capital, less any impairment of capital (if same shall be found by arbitrators).

2. The value in cash of his capital investment and the same proportion of surplus or deficit as his percentage of profit or loss.

3. The arbitrators in arriving at what may be due under subparagraphs 1 and 2 are hereby bound in arriving at any sum due for either capital or profits, to take into consideration whether or not the firm has had all finished contracts with the United States Government or any department thereof, renegotiated, and if such contracts have not been renegotiated and finally settled, then and in that event proper provision and allowances shall be made to cover

any demands of the Government and also to finally repay any additional allowances of awards made to the firm in connection with any such contracts. The above provisions applying especially to work done by the firm with the Maritime Commission and the Navy Department of the United States Government.

4. Such expelled partner shall be paid his proportionate share of profits actually earned and received by the partnership, as defined in paragraph two of this agreement, less his proportionate part of actual known losses, and less his proportionate part of the taxes of whatever character, public dues, charges and assessments current and in arrears; such losses to be charged against capital and profits, whichever is necessary to absorb same.

5. No allowance shall be made for "Good Will" (or anticipated profits or losses).

6. If the expulsion of any partner shall be sustained by a majority of the arbitrators, and no impairment of capital is found, then and in such event, the expelled partner shall receive, in addition to the above, his salary in cash for the balance of the term.

(c) The partners hereto mutually agree that application to arbitrators shall be made only in the event that any disagreement arises between the parties in connection with a dissolution of the partnership, and that such arbitrators as hereinafter provided for to hear and rule upon any and all matters relating to such dissolution. However, it is not intended that dissolution be effected only through arbitration, but the co-partnership may also be terminated by agreement between the partners without recourse to arbitration, either upon expiration of any partnership term or to take effect prior thereto. It is further agreed that if any such agreement relating to dissolution of the partnership shall have been reduced to writing and signed by all the

partners none of them shall thereafter have any of the rights for arbitration as hereinbefore set forth.

Nine. Upon notice of dissolution of the partnership at the end of any term, or notice for the expulsion of a partner, arbitrators shall be appointed in the following manner:

(a) In event of written notice for dissolution of the partnership, the partner receiving such notice shall within five days appoint his arbitrator.

(b) The remaining partners shall be entitled to appoint one arbitrator.

(c) In the event of expulsion the partner expelled shall be entitled to appoint an arbitrator and the two remaining partners shall appoint one arbitrator.

(d) Each side shall respectively appoint arbitrators within five days after receiving notice from the other or others to make such appointment. Failure of the partner receiving notice and the partners sending notice, as the case may be, to appoint an arbitrator shall authorize the other or others to make an appointment. If such two arbitrators shall fail, or be unable to agree on a third arbitrator, then and in such event, the Chief Judge of the Supreme Bench of Baltimore City, upon application made by any partner hereto for that purpose, is hereby authorized and empowered to appoint such additional arbitrator.

(e) The award to be made by the arbitrators or a majority of them shall be made within twenty (20) days after the appointment of the third arbitrator and the award of a majority of such arbitrators shall be binding and conclusive upon the parties hereto.

Ten. That upon the termination of the partnership by notice, and not for the misconduct of one of the partners, none of the parties who shall then be members of the partnership shall thereafter use or employ the firm name, but

each of said parties may advertise or announce that he was formerly a member of the partnership.

Eleven. It is agreed among the partners hereto, anything in this agreement to the contrary notwithstanding, that in the event of any partner's death, the amount to the credit of said deceased partner on the firm's books on February 1, 1943, or on February 1st in any subsequent year, provided the partnership has run for twelve consecutive months; otherwise the date of settlement shall be as of the prior February 1st, less the amount of his withdrawals over salary, shall be paid to the Executors or Administrators of said deceased partner, and same shall be in full settlement of the deceased partner's interest in said partnership.

Twelve. It is further agreed between the parties hereto that this agreement shall bind the heirs, executors and administrators of each. It is understood that the witnesses hereto have been witnesses to the signatures of this agreement, and said witnesses have been permitted to read the contents of said agreement and are familiar with its terms.

As Witness the hands and seals of said partners, the day and year first above written. Executed in three original counterparts.

Test:

(Signed) Frank H. Knipp (Seal)

(Signed) John J. West

(Signed) Howard F. Knipp (Seal)

(Signed) John J. West

(Signed) John C. Knipp (Seal)

(Signed) John J. West

Answer Docket No. 50153

Now Comes the Commissioner of Internal Revenue, by his attorney, Kenneth W. Gemmill, Acting Chief Counsel, Internal Revenue Service, and for answer to the petition in the above-entitled proceeding admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in the first sentence of paragraph 3 of the petition. Denies the remaining allegations in paragraph 3 of the petition.

4 (a). Denies that the Commissioner erred as alleged in subparagraph (a) of paragraph 4 of the petition.

5 (a). Admits that the petitioner was a member of John C. Kipp & Sons, a partnership engaged in the business of interior woodwork manufacture. Denies the remaining allegations in subparagraph (a) of paragraph 5 of the petition.

5 (b). Denies the allegations contained in subparagraph (b) of paragraph 5 of the petition.

5 (c). Denies the allegations contained in subparagraph (c) of paragraph 5 of the petition.

5 (d). Admits the allegations contained in the first sentence of subparagraph (d) of paragraph 5 of the petition. Denies the remaining allegations in subparagraph (d) of paragraph 5 of the petition.

6. Denies generally each and every allegations of the petition not hereinabove specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the appeal with respect to the errors alleged in the petition be denied.

(Signed) Kenneth W. Gemmill
Acting Chief Counsel
Internal Revenue Service

Of Counsel:

John T. Rogers
Regional Counsel
James C. Macklox
Acting Appellate Counsel
Philip A. Bayer
Acting Associate Appellate Counsel
Paul E. Waring
Special Attorney
Internal Revenue Service
PEW/ips 9-17-53

Answer Docket No. 50154

Now comes the Commissioner of Internal Revenue, by his attorney, Kenneth W. Gemmill, Acting Chief Counsel, Internal Revenue Service, and for answer to the petition in the above-entitled proceeding admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits the allegations contained in the first sentence of paragraph 3 of the petition. Denies the remaining allegations in paragraph 3 of the petition.

4 (a). Denies that the Commissioner erred as alleged in subparagraph (a) of paragraph 4 of the petition.

5 (a). Admits the allegations contained in subparagraph (a) of paragraph 5 of the petition.

5 (b). Admits that the decedent was a member of John C. Knipp & Sons, a partnership engaged in the business of interior woodwork manufacture. Denies the remaining allegations in subparagraph (b) of paragraph 5 of the petition.

5 (c). Denies the allegations contained in subparagraph (c) of paragraph 5 of the petition.

5 (d). Denies the allegations contained in subparagraph (d) of paragraph 5 of the petition.

5 (e). Denies the allegations contained in subparagraph (e) of paragraph 5 of the petition.

6. Denies generally each and every allegation of the petition not hereinabove specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the appeal with respect to the errors allegation in the petition be denied.

(Signed) Kenneth W. Gemmill
Acting Chief Counsel
Internal Revenue Service

Of Counsel:

John T. Rogers
Regional Counsel
James C. Maddox
Acting Appellate Counsel
Philip A. Bayer
Acting Associate Appellate Counsel
Paul E. Waring
Special Attorney
Internal Revenue Service
PEW/ips 9-18-53

Order Reopening and Reconsolidating and Setting Cases For Further Hearing—Docket No. 50153 and 50154

Complementing order entered this date in Estate of Frank H. Knipp, deceased, Howard F. Knipp, executor, Petitioner, v. Commissioner of Internal Revenue, Respondent, Docket No. 42545, it is

ORDERED: That the two cases named in the caption of this order are hereby reopened for further hearing, and they are reconsolidated with the case at Docket No. 42545, and they are placed for further hearing at 10:00 a.m., September 13, 1954, at Washington, D.C.

(Signed) Luther A. Johnson
Judge

Dated: Washington, D.C.
May 28, 1954

Stipulation of Facts—Docket No. 50153 and 50154

It is hereby stipulated that for the purpose of this proceeding the following statements shall be accepted as facts without prejudice to the right of either party to introduce other and further evidence not inconsistent therewith.

1. Howard F. Knipp, the petitioner in Docket No. 50153, is an individual residing at 204 Goodwood Gardens, Baltimore, Maryland. He kept his books and filed his income tax returns for the years 1947 and 1948 on the basis of the calendar year. The returns were filed with the Collector of Internal Revenue for the district of Maryland. Copies of these returns are attached hereto and marked Exhibits 1-A and 2-B, respectively.

2. Howard F. Knipp is the duly appointed executor of the Estate of Frank H. Knipp. As executor he is also the petitioner in Docket No. 50154. A copy of the last return of Frank H. Knipp, for the period from January 1, 1947 to

November 21, 1947, is attached hereto and marked Exhibit 3-G.

3. The firm of John C. Knipp & Sons has been engaged in the retail furniture, interior woodwork, and shipfitting businesses since 18[illegible]. On July 7, 1943, Frank H. Knipp, Howard F. Knipp, and John C. Knipp entered into a partnership agreement for the conduct of the firm, effective as of February 1, 1942. A copy of this agreement is attached hereto and marked Exhibit 4-D.

4. On June 12, 1944, John C. Knipp filed a bill of complaint, captioned John C. Knipp v. Frank H. Knipp and Howard F. Knipp, in Circuit Court No. 2 of Baltimore City. A copy of the bill of complaint, with attached exhibits, is attached hereto and marked Exhibit 5-E for the purpose of showing that the complaint was filed but not to prove any of the allegations contained therein. The petitioner does not hereby or otherwise admit that any of the allegations in the said bill of complaint are true.

5. On August 1, 1945, John C. Knipp entered into a Memorandum of Agreement of Settlement of his interest in John C. Knipp & Sons with Frank H. Knipp and Howard F. Knipp. As part of this agreement the above bill of complaint was entered as agreed and settled. A copy of the Memorandum of Agreement and Settlement is attached hereto and marked Exhibit 6-F.

6. Copies of the capital and withdrawal accounts of Frank H. Knipp, Howard F. Knipp and John C. Knipp in John C. Knipp & Sons from February 1, 1942, are attached hereto and marked Exhibits 7-G, 8-H, and 9-I, respectively.

7. Frank H. Knipp died testat. on November 21, 1947, while a member of the partnership of John C. Knipp & Sons. A copy of the will of Frank H. Knipp is attached hereto and marked Exhibit 10-J. A copy of the accounting filed with the Orphans Court of Baltimore City by Howard

F. Knipp as executor of the Estate of Frank H. Knipp is attached hereto and marked Exhibit 11-K. (The parties agree that the record in this proceeding will be kept open to receive this stipulated exhibit.)

8. The Federal Estate Tax return filed by Howard F. Knipp, as executor of the estate of Frank H. Knipp, with the Collector of Internal Revenue discloses in Schedule F as "the value at date of death" the following: "1. Member of a co-partnership trading as John C. Knipp & Sons—$54,875.96," which is analyzed in Exhibit 12-L attached hereto.

9. On February 1, 1948, Knipp & Company, Inc. began business as a successor to the business then conducted under the name of "Howard F. Knipp and Frank H. Knipp, Deceased, T/A John C. Knipp & Sons." A copy of the agreement signed by "Howard F. Knipp, surviving partner and Executor of Estate of Frank H. Knipp, a deceased partner" and by "H. Franklin Knipp, Vice-President, Knipp & Company, Inc." is attached hereto and marked Exhibit 13-M. A copy of the charter and by-laws of the corporation; a list of the stockholders, showing the number of shares owned by each; a list of the officers and directors of the corporation; and the minutes relating to the formation of the corporation are also attached hereto and marked Exhibits 14-N, 15-O, 16-P and 17-Q, respectively.

10. The partnership of John C. Knipp & Sons, for each of the taxable years ended January 31, 1946, and January 31, 1947, kept its books and filed "Partnership Return of Income" on the basis of a fiscal year ended January 31. There are attached hereto and marked Exhibits 18-R and 19-S, respectively, the "Partnership Return of Income" filed by John C. Knipp & Sons, Baltimore, Maryland for the taxable years ended January 31, 1946, and January 31, 1947. There is also attached hereto and marked Exhibit

21-U the "Partnership Return of Income" filed by the business conducted under the name of Frank H. Knipp, Deceased, and Howard F. Knipp, T A John C. Knipp & Sons for the fiscal year ended January 31, 1949.

11. There are attached hereto and marked Exhibits 22-W and 23-W, respectively, fiduciary income tax returns for the taxable period November 27, 1947, to December 31, 1947, and for the calendar year 1948, which were filed by the Estate of Frank H. Knipp, Howard F. Knipp, Executor.

12. There are attached hereto and marked Exhibits 24-X and 25-Y copies of the audit reports prepared by J. E. O. Feller and Company for the taxable years ended January 31, 1945 and January 31, 1946, and relating to the business known as John C. Knipp & Sons.

13. There is attached hereto and marked Exhibit 26-Z a copy of the audit report prepared by Charles H. Schnepfe, Jr. and Company and captioned "Frank H. Knipp and Howard F. Knipp, T A John C. Knipp & Sons" as of January 31, 1947.

14. There is attached hereto and marked Exhibit 27-AA a copy of the audit report prepared by Charles H. Schnepfe, Jr. and Company and captioned "Frank H. Knipp, Deceased and Howard F. Knipp, T A John C. Knipp & Sons" as of January 31, 1948.

Randolph Paul
1614 Eye Street, N.W.
Attorney for the petitioner.
Daniel R. Taylor
Chief Counsel
Internal Revenue Service
Attorney for the respondent.

EXHIBIT 4-D

Agreement of Co-Partnership, entered into this 7th day of July, 1943, by and between Frank H. Knipp, Howard F. Knipp and John C. Knipp, all being residents of Baltimore City in the State of Maryland.

Whereas, the said Frank H. Knipp, Howard F. Knipp and John C. Knipp have for many years past been engaged in the business of manufacturing interior woodwork, furniture, office fixtures, etc., and of buying and selling furniture and other merchandise to the business belonging, under the firm name of John C. Knipp & Sons;

Now, This Agreement Witnesseth: That the said parties hereto, for and in consideration of the premises and of the mutual covenants herein contained, and of One Dollar ($1.00) each to the other paid, the receipt whereof is hereby acknowledged, have mutually covenanted and agreed as follows:

One. The said business as heretofore carried on shall be continued as in past years, and shall be conducted under the firm name of John C. Knipp & Sons.

Two. The said partnership shall commence as of February 1, 1942 and shall continue for two (2) years.

Three. All of the assets, merchandise and personal property of every kind, including any real estate, now belonging to said co-partnership shall continue to be owned under the terms of this Agreement, also prior contribution of capital, which contribution of capital is herein designated as to the amounts of same, as invested by each of the partners is as follows:

a. That Frank H. Knipp has contributed to the capital of said partnership the sum of One Hundred and Fifteen Thousand and Eighty-nine Dollars and Eighty-nine Cents ($115,089.89).

b. That Howard F. Knipp has contributed to the capital of said partnership the sum of Fifty Thousand, Five Hundred and Fifty-four Dollars and Thirty-six Cents ($50,554.36).

c. That John C. Knipp has contributed to the capital of said partnership the sum of Thirty-five Thousand, Three Hundred and Fourteen Dollars and Eighty-eight Cents ($35,314.88).

Four. That irrespective of the capital contributed by each partner, as in the aforegoing paragraph set forth, it is understood and agreed between the parties hereto that the profit and losses of the business are to be divided in the following proportions:

Frank H. Knipp	40%
Howard F. Knipp	40%
John C. Knipp	20%

Five. It is agreed by and between the parties hereto that there shall be kept at all times during the continuation of the co-partnership, just and true books of accounts, wherein shall be entered all moneys received, paid and expended in said business, as well as all goods and merchandise bought, manufactured and sold, by reason of or on account of said business and all matters and things whatsoever, to the business and management thereof belonging, to which books all of said partners may have access at any time.

The books of the firm shall be audited by a Certified Public Accountant and balanced on the first day of February in each year and the profits or losses credited to said partners in the proportions as above named.

Six. Neither partner shall at any time sign the firm name or pledge the firm's credit in any manner as surety or guarantor on any paper, bill, bond, note or draft, or other obligation whatsoever; neither partner shall assign, pledge or mortgage any of the partnership property, or his inter-

est therein, or do anything or permit any act whereby the firm's money, interests or property may be liable to seizure, attachment or execution.

Seven. Each partner shall faithfully do and administer each and every part of the work undertaken or taken charge of by him or by them solely for the profit and advantage of the partnership. The salaries payable for the term of this contract shall be:

Frank H. Knipp	$25,000 annually
Howard F. Knipp	25,000 annually
John C. Knipp	15,000 annually

Such salaries to be paid proportionately on a monthly basis. If any changes in these salaries are made by way of increase or decrease, such increase or decrease shall be uniform. Salaries may be changed, subject to the limitation hereinabove set forth by any two of the three partners.

Eight. It is mutually agreed between the parties hereto that any partner may at any time give written notice for dissolution of the partnership, but same shall be effective at the end of the current term only. Final dissolution of the partnership shall then immediately be completed at the expiration of that term in accordance with Paragraph Nine of this agreement. No notice for dissolution being given, (and such notice must be given at least thirty days before the expiration of any term), it is agreed that this particular agreement shall continue for one year after the date of expiration as set forth in Paragraph Two hereof and shall continue thereafter from year to year until such notice be given or unless terminated as immediately hereafter provided.

(b) If any partner shall be guilty of misconduct, including drinking during business hours, or whose conduct shall be inimical to the business, so as to render it impracticable for the parties to carry on the partnership business to-

gether, then and in any such event, the offending partner may be expelled from the partnership by the majority vote of arbitrators to be appointed as hereinafter provided. Such arbitrators shall sit as a body to hear testimony of all partners and witnesses that may be summoned. In the event of arbitration, each partner may be represented by counsel.

(c) From and after his expulsion, such expelled partner shall not at any time solicit or perform work of any clients of the partnership, nor of any of the continuing partners, and shall not disclose to any firm, person or corporation the name of any client or clients, and such expelled partner shall not at any time use the firm name, either in conjunction with his own name or otherwise, nor use the words, "formerly of John C. Knipp & Sons," or any other combination of words containing the firm name. The provisions of this sub-section shall be operative for one year after date of expulsion.

(d) Upon expulsion of any partner, provided same is sustained by a majority of the arbitrators, the remaining partners will immediately pay to such expelled partner, upon the findings of a majority of the arbitrators the following:

1. The whole of his invested capital, less any impairment of capital (if same shall be found by arbitrators).

2. The value in cash of his capital investment and the same proportion of surplus or deficit as his percentage of profit or loss.

3. The arbitrators in arriving at what may be due under sub-paragraphs 1 and 2 are hereby bound in arriving at any sum due for either capital or profits, to take into consideration whether or not the firm has had an finished contracts with the United States Government or any department thereof, renegotiated, and if such contracts have not been renegotiated and finally settled, then and in that

event proper provision and allowances shall be made to cover any demands of the Government and also to finally repay any additional allowances of awards made to the firm in connection with any such contracts. The above provisions applying especially to work done by the firm with the Maritime Commission and the Navy Department of the United States Government.

4. Such expelled partner shall be paid his proportionate share of profits actually earned and received by the partnership, as defined in paragraph two of this agreement, less his proportionate part of actual known losses, and less his proportionate part of the taxes of whatever character, public dues, charges and assessments current and in arrears; such losses to be charged against capital and profits, whichever is necessary to absorb same.

5. No allowance shall be made for "Good Will" (or anticipated profits or losses).

6. If the expulsion of any partner shall be sustained by a majority of the arbitrators, and no impairment of capital is found, then and in such event, the expelled partner shall receive, in addition to the above, his salary in cash for the balance of the term.

(e) The partners hereto mutually agree that application to arbitrators shall be made only in the event that any disagreement arises between the parties in connection with a dissolution of the partnership, and that such arbitrators as hereinafter provided for to hear and rule upon any and all matters relating to such dissolution. However, it is not intended that dissolution be effected only through arbitration, but the co-partnership may also be terminated by agreement between the partners without recourse to arbitration, either upon expiration of any partnership term or to take effect prior thereto. It is further agreed that if any such agreement relating to dissolution of the partnership shall have been reduced to writing and signed by all the

partners none of them shall thereafter have any of the rights for arbitration as hereinbefore set forth.

Nine: Upon notice of dissolution of the partnership at the end of any term, or notice for the expulsion of a partner, arbitrators shall be appointed in the following manner:

(a) In event of written notice for dissolution of the partnership, the partner receiving such notice shall within five days appoint his arbitrator.

(b) The remaining partners shall be entitled to appoint one arbitrator.

(c) In the event of expulsion the partner expelled shall be entitled to appoint an arbitrator and the two remaining partners shall appoint one arbitrator.

(d) Each side shall respectively appoint arbitrators within five days after receiving notice from the other or others to make such appointment. Failure of the partner receiving notice and the partners sending notice, as the case may be, to appoint an arbitrator shall authorize the other or others to make an appointment. If such two arbitrators shall fail, or be unable to agree on a third arbitrator, then and in such event, the Chief Judge of the Supreme Bench of Baltimore City, upon application made by any partner hereto for that purpose, is hereby authorized and empowered to appoint such additional arbitrator.

(e) The award to be made by the arbitrators or a majority of them shall be made within twenty (20) days after the appointment of the third arbitrator and the award of a majority of such arbitrators shall be binding and conclusive upon the parties hereto.

Ten. That upon the termination of the partnership by notice, and not for the misconduct of one of the partners, none of the parties who shall then be members of the partnership shall thereafter use or employ the firm name, but

each of said parties may advertise or announce that he was formerly a member of the partnership.

Eleven. It is agreed among the partners hereto, anything in this agreement to the contrary notwithstanding, that in the event of any partner's death, the amount to the credit of said deceased partner on the firm's books on February 1, 1943, or on February 1st in any subsequent year, provided the partnership has run for twelve consecutive months; otherwise the date of settlement shall be as of the prior February 1st, less the amount of his withdrawals over salary, shall be paid to the Executors or Administrators of said deceased partner, and same shall be in full settlement of the deceased partner's interest in said partnership.

Twelve. It is further agreed between the parties hereto that this agreement shall bind the heirs, executors and administrators of each. It is understood that the witnesses hereto have been witnesses to the signatures of this agreement, and said witnesses have been permitted to read the contents of said agreement and are familiar with its terms.

As Witness the hands and seals of said partners, the day and year first above written. Executed in three original counterparts.

Test:

(Signed) Frank H. Knipp (Seal)

(Signed) John J. West

(Signed) Howard F. Knipp (Seal)

(Signed) John J. West

(Signed) John C. Knipp (Seal)

(Signed) John J. West

EXHIBIT 6-F

Memorandum of Agreement of Settlement of Partnership of John C. Knipp & Sons

1. The pending case in the Circuit Court No. 2 of Baltimore City is to be entered Agreed and Settled and each side is to pay its own costs and notice of expulsion is to be withdrawn.

2. John C. Knipp withdraws from the firm as of August 1, 1945 and public notice to that effect shall be given in the following language:

August 1, 1945

Notice is hereby given that John C. Knipp as of this day withdraws from the firm of John C. Knipp & Sons.

Frank H. Knipp and Howard F. Knipp, as successors of John C. Knipp & Sons, will continue and carry on the business of the firm under the old name at the old location, 600 S. Pulaski Street.

3. John C. Knipp shall share in all profits and bear his share of all losses from all contracts of John C. Knipp & Sons outstanding and existing as of August 1st, 1945 whether completed, re-negotiated, subject to re-negotiation, or in the course of re-negotiation or uncompleted. His share in the profits therein or losses therein shall be determined as and when the said contracts are finally completed, re-negotiated or canceled by the United States Government. The said share of the said John C. Knipp in the profits and in the losses in all of said contracts is twenty per cent (20%). The salary of John C. Knipp of $15,000 per annum has been paid down to 1945 and will be continued and paid down through January 31, 1946.

4. It is agreed that the arbitrators hereinafter mentioned shall hereafter finally determine the value of the fixed assets as set out in the audit and report of John C. Knipp

& Sons for the year ending January 31, 1945 by J. E. O. Feller & Son and that any expenses authorized or incurred by said arbitrators for appraisal or audit of the books or otherwise, in order to secure the information necessary for them to determine a fair and just valuation of said fixed assets shall be charged against the partnership. If the arbitrators reduce or increase the values of said fixed assets, as shown in said audit and report, the net increase resulting to John C. Knipp shall be paid to the said John C. Knipp and any net reduction resulting therefrom shall be paid by said John C. Knipp.

5. It is further agreed that if any dispute shall arise between the parties hereto about the proper amount of the invested capital of John C. Knipp or the proper amount of his share in the profits or losses of John C. Knipp & Sons, under the terms of this Agreement, said dispute shall also be submitted for final determination by the arbitrators hereinafter mentioned and that any expenses authorized or incurred by said arbitrators for appraisal or audit or otherwise in order to secure information necessary for them to ascertain the proper amount of the invested capital of John C. Knipp and the proper amount of his share in the profits of John C. Knipp & Sons, under the terms of this Agreement, shall be charged against the partnership.

6. Access to the partnership books by Edgar Allan Poe or by a certified public accountant of his selection shall be permitted at any and all reasonable times.

7. It is understood and agreed that Edgar Allan Poe, counsel for John C. Knipp, is to represent John C. Knipp as to all questions and matters arising or growing out of the contracts of John C. Knipp & Sons outstanding and existing as of August 1st, 1945, whether completed, renegotiated, subject to re-negotiation or in the course of renegotiation or uncompleted as of August 1st, 1945, and

with all the rights and authority of John C. Knipp in the premises and that John C. Knipp will not hereafter visit the premises and plants of John C. Knipp & Sons, but that all his dealings and contracts with the said firm will be through his counsel, Edgar Allan Poe.

8. The partnership holds a policy of insurance on the life of John C. Knipp, its cash surrender value as of the date of this Agreement being $7,467.33. This policy shall be assigned to John C. Knipp, the beneficiary thereunder to be the wife of John C. Knipp. No further premium shall be paid on the policy from partnership assets. The transfer of said policy at the above valuation shall constitute a payment to John C. Knipp on account of his capital. The partnership also has a motor car used by John C. Knipp. The title of this motor car shall be transferred to the wife of John C. Knipp and the book value thereof as of this date shall constitute a payment to John C. Knipp on account of his capital.

9. Simultaneously herewith John C. Knipp has executed and in the execution of the same his wife has joined, a deed and a bill of sale to Frank H. Knipp and Howard F. Knipp, conveying and assigning to them his interest in the fixed assets of the co-partnership, (including the amount realized from the property known as Clay Street, recently sold to Wm. P. Stein Company, land and improvements, machinery, equipment, furniture and fixtures) wheresoever situate. Said deed and bill of sale have been delivered simultaneously herewith, to Edgar Allan Poe; upon payment to John C. Knipp of what may be agreed upon or be determined by the arbitrators aforesaid as the net value of the interest of John C. Knipp in said fixed assets, said deed and bill of sale shall be delivered to Frank H. Knipp and Howard F. Knipp.

10. It is understood that overhead incident to the carrying on and completing of all contracts of John C. Knipp &

Sons outstanding and existing as of August 1st, 1945, and to the carrying on and completing of any new contracts of John C. Knipp & Sons entered into by John C. Knipp & Sons from and after August 1st, 1945 shall be charged in proportion to the billings relating to the above classification of contracts.

11. The parties hereto agree that all disputes that may arise between them shall be settled by arbitration and to this end Frank H. Knipp and Howard F. Knipp hereby name Chester F. Hockley as the arbitrator selected by them and John C. Knipp hereby names Henry L. Straus as the arbitrator selected by him, and it is agreed by the parties that the decision of said arbitrators on any matter that shall be referred to them shall be conclusive and binding upon all of the parties hereto, provided, however, that, in the event that the said arbitrators do not agree then within five days from the date that they fail to agree, they shall select a third person to act with them and if they fail to do so within said period of five days, then the third person shall be a person named by the then Chief Judge of the Supreme Bench of Baltimore City and the three persons so chosen shall consider the matter as to which the two could not agree and the decision of any two of said three, shall be conclusive and binding on all the parties hereto; each of the parties hereto shall be entitled to be represented by counsel before the arbitrators and to introduce testimony both written and oral with respect to any matter submitted to them.

In the event of the death of Edgar Allan Poe he shall be succeeded hereunder by the person who is at that time the arbitrator named by John C. Knipp and said John C. Knipp shall then name a new arbitrator and in the event of the death of Chester F. Hockley, Frank H. Knipp and Howard F. Knipp shall then name a new arbitrator.

In Witness Whereof, the parties hereto have signed and sealed this Agreement.

Executed in Duplicate.

Witness:

Frank H. Knipp (Seal)
Howard F. Knipp (Seal)
John C. Knipp (Seal)

Edgar Allan Poe

Note:

Page 74 is blank.
Pages 75 - 79 are on card 3.
Pages 80 - 84 are on card 4.

EXHIBIT 10-J

I, Frank H. Knipp, residing and domiciled in the City of Baltimore, State of Maryland, being of sound and disposing mind, memory and understanding, do hereby make, publish and declare this my Last Will and Testament, and I do hereby revoke any and all testamentary dispositions heretofore made by me.

Item 1.—I direct that my Executor hereinafter named pay out of my Estate all of my just debts and funeral expenses.

Item 2.—I hereby give and bequeath to my sister, Stella K. Reddick, now of Baltimore City, the sum of Twenty Thousand ($20,000.00) Dollars, absolutely, but if the said Stella K. Reddick predeceases me, I, in that event, give and bequeath said sum to my nephew, Howard F. Knipp, now of Baltimore City, absolutely.

Item 3.—I hereby give and bequeath to my brother, Dr. J. Edgar Knipp, now of Baltimore City, the sum of Five Thousand ($5,000.00) Dollars, absolutely, but if the said Dr. J. Edgar Knipp predeceases me, I, in that event, give and bequeath said sum to my said nephew, Howard F. Knipp, absolutely.

Item 4.—I hereby give and bequeath to my brother Dr. Arthur R. Knipp, of Boston, Massachusetts, the sum of Ten Thousand ($10,000.00) Dollars, absolutely.

Item 5.—I hereby give and bequeath to my nephew, Marshall E. Reddick, now of Denver, Colorado, the sum of Three Thousand ($3,000.00) Dollars, absolutely.

Item 6.—I hereby give and bequeath to my nephew, Harold K. Reddick, now of Dallas, Texas, the sum of Three Thousand ($3,000.00) Dollars, absolutely.

Item 7.—I hereby give and bequeath to my nephew, John G. Reddick, now of Richmond, Virginia, the sum of

Four Thousand ($4,000.00) Dollars, absolutely; also my gold watch and chain.

Item 8.—I hereby bequeath to Daniel L. Senft, the sum of Six Thousand ($6,000.00) Dollars, but in trust and special confidence, nevertheless, for the uses and with the powers following, that is to say:—

In Trust for the use, benefit, education and general welfare of Daniel L. Senft, Jr., son of the said Daniel L. Senft, without the necessity of any Court assuming jurisdiction over said trust; to hold, manage and control the trust property, to collect the rents and profits thereon, and use full power and authority to sell, lease and dispose of the same in any manner, to execute a good and sufficient deed or deeds therefor, of the whole or any part of the trust estate herein created, and to invest, reinvest and change the investments from time to time, and as often, in the judgment of my said Trustee, or his successor, as it may seem advantageous, and without there being any obligation on the part of any purchaser or purchasers thereof to see to the application of the purchase money, and without application to any Court for authority to do so; to apply the trust corpus and income, or any part thereof, to carry out the purposes of said trust; to pay any unexpended portion of the net income from the trust estate to the said Daniel L. Senft, Jr., into his hands, and not into the hands of another, whether claiming by his authority or otherwise, until the said Daniel L. Senft, Jr., attains the age of twenty-five years, nor shall any of the trust income or trust estate be subject to the assignment, debts or engagements of the said Daniel L. Senft, Jr.; when the said Daniel L. Senft, Jr., attains the age of twenty-five years, I direct my said Trustee, or his successor to pay over, transfer and deliver to the said Daniel L. Senft, Jr., into his hands, and not into the hands of another, whether claiming by his authority or otherwise, the balance, if any, of the remaining corpus and any

remaining unexpended or accrued income in said trust, free, clear and discharged of all trusts. But in the event that the said Daniel L. Senft, Jr. predeceases me and his brother, David Reckord Senft, is living at the time of my death, I direct my said Trustee, or his successor, to hold the said sum of Six Thousand ($6,000.00) Dollars in trust for the use and benefit of David Reckord Senft, for the similar purpose of education and general welfare of the said David Reckord Senft, and subject to the same powers and provisions as hereinabove expressed.

But in the event that the said Daniel L. Senft, Jr. dies after the trust herein provided becomes operative and effective, but before the said Daniel L. Senft, Jr. attains the age of twenty-five years, I direct that my said Trustee, or his successor, then hold the unexpended portion, if any, of said trust corpus and income for the use and benefit of the said David Reckord Senft, if then living, for the similar purpose of education and general welfare of the said David Reckord Senft, subject to the same powers and provisions as hereinabove expressed.

Item 9.—I hereby bequeath to Daniel L. Senft, the sum of Six Thousand ($6,000.00) Dollars, but in trust and special confidence, nevertheless, for the uses and with the powers following, that is to say:—

In Trust for the use, benefit, education and general welfare of David Reckord Senft, son of the said Daniel L. Senft, without the necessity of any Court assuming jurisdiction over said trust; to hold, manage and control the trust property, to collect the rents and profits thereon, and use full power and authority to sell, lease and dispose of the same in any manner, to execute a good and sufficient deed or deeds therefor, of the whole or any part of the trust estate herein created, and to invest and reinvest and change the investments from time to time, and as often, in the judgment of my said Trustee, or his successor, as it may seem advantageous, and without there being any

obligation on the part of any purchaser or purchasers thereof to see to the application of the purchase money, and without application to any Court for authority to do so; to apply the trust corpus and income, or any part thereof, to carry out the purposes of said trust; to pay any unexpended portion of the net income from the trust estate to the said Daniel Reckord Senft, into his hands, and not into the hands of another, whether claiming by his authority or otherwise, until the said David Reckord Senft attains the age of twenty-five years, nor shall any of the trust income or trust estate be subject to the assignment, debts or engagements of the said David Reckord Senft; when the said David Reckord Senft attains the age of twenty-five years, I direct my said Trustee, or his successor, to pay over, transfer and deliver to the said David Reckord Senft, into his hands, and not into the hands of another, whether claiming by his authority or otherwise, the balance, if any, of the remaining corpus and any remaining unexpended or accrued income in said trust, free, clear and discharged of all trusts.

But in the event that the said David Reckord Senft predeceases me and his brother, Daniel L. Senft, Jr. is living at the time of my death, I direct my said Trustee, or his successor, to hold the said sum of Six Thousand ($6,000.00) Dollars in trust for the use and benefit of Daniel L. Senft, Jr. for the similar purpose of education and general welfare of the said Daniel L. Senft, Jr., and subject to the same powers and provisions as hereinabove expressed.

But in the event that the said David Reckord Senft dies after the trust herein provided becomes operative and effective, but before the said David Reckord Senft attains the age of twenty-five years, I direct that my said Trustee, or his successor, then hold the unexpended portion, if any, of said trust corpus and income for the use and benefit of the said Daniel L. Senft, Jr., if then living, for the similar purpose of education and general welfare

of the said Daniel L. Senft, Jr., and subject to the same powers and provisions as hereinabove expressed.

Item 10.—In the event that both Daniel L. Senft, Jr. and David Reckord Senft predeceases me, it is my intention that the two trusts hereinabove provided for the said Daniel L. Senft, Jr. and David Reckord Senft, respectively, shall be null, void and of no effect, and the moneys, which would otherwise have constituted the corpus of said trust, I, in that event, give and bequeath said sums to Howard F. Knipp.

Item 11.—In the event that both Daniel L. Senft, Jr. and David Reckord Senft, one or both of them having survived me, die before attaining the age of twenty-five years, I direct that all property in both of the two aforesaid trusts be paid over, transferred and delivered to Howard F. Knipp.

Item 12.—In the event that the said Daniel L. Senft, Jr., is living at the time of my death and has already by that time attained the age of twenty-five years, the trust hereinabove provided for his benefit in Item 8 of this my Last Will and Testament, shall be null, void and of no effect, and in lieu thereof, I give and bequeath the sum of Six Thousand ($6,000.00) Dollars to the said Daniel L. Senft, Jr., absolutely.

Item 13.—In the event that the said David Reckord Senft is living at the time of my death and has already by that time attained the age of twenty-five years, the trust hereinabove provided for his benefit in Item 9 of this my Last Will and Testament, shall be null, void and of no effect, and in lieu thereof, I give and bequeath the sum of Six Thousand ($6,000.00) Dollars to my said nephew, David Reckord Senft, absolutely.

Item 14.—I hereby bequeath to William G. Donahue, now of Philadelphia, Pennsylvania, the sum of Ten Thousand ($10,000.00) Dollars, but in trust and special con-

fidence, nevertheless, for the use and benefit of my sister Daisy J. Caine, and with the powers following, that is to say:—

In Trust—for the use, benefit and general welfare of my said sister, Daisy J. Caine, without the necessity of any Court assuming jurisdiction over said trust; to hold, manage and control the trust property, to collect the rents and profits thereon, and use full power and authority to sell, lease and dispose of the same in any manner, to execute a good and sufficient deed or deeds therefor, of the whole or any part of the trust estate herein created, and to invest, reinvest and change the investments from time to time, and as often, in the judgment of my said Trustee, or his successor, as it may seem advantageous, and without there being any obligation on the part of any purchaser or purchasers thereof to see to the application of the purchase money, and without application to any Court for authority to do so; to expend out of the corpus or net income, or both, such sums as my Trustee, or his successor, within his complete discretion deems advisable to provide for the general welfare of the said Daisy J. Caine. Upon the death of the said Daisy J. Caine, to pay over, transfer and deliver to Dorothy Caine Donahue, now of Philadelphia, Pennsylvania, if she is living at the time of the death of the said Daisy J. Caine, the balance, if any, of the remaining trust corpus and any remaining unexpended or accrued income in said trust, free, clear and discharged of all trusts, but if the said Dorothy Caine Donahue is not living at the time of the death of the said Daisy J. Caine, then I direct my trustee to pay over, transfer and deliver the said balance, if any, and the said unexpended or accrued income, if any, to the next of kin of the said Dorothy Caine Donahue, per stirpes and not per capita, free, clear and discharged of all trusts.

Item 15.—I hereby bequeath to Lloyd Wilkinson, nephew of Mary Evelyn Hutchins, now of Woodlawn, Baltimore

County, in the State of Maryland, the sum of Twenty Thousand ($20,000.00) Dollars but in trust and special confidence nevertheless for the uses and with the powers following, that is to say:—

In Trust for the use, benefit and general welfare of Mary Evelyn Hutchins, now of Woodlawn, Baltimore County, Maryland, as aforesaid, without the necessity of any court assuming jurisdiction over said trust; to hold, manage and control the trust property, to collect the rents and profits thereon, and use full power and authority to sell, lease and dispose of the same in any manner, to execute a good and sufficient deed or deeds therefor, of the whole or any part of the trust estate herein created, and to invest, reinvest and change the investments from time to time, and as often, in the judgment of my said trustee, or his successor, as it may seem advantageous, and without there being any obligation on the part of any purchaser or purchasers thereof to see to the application of the purchase money, and without application to any court for authority to do so; to expend out of the corpus or net income, or both such sums as my trustee, or his successor, within his complete discretion deems advisable, to provide for the general welfare of the said Mary Evelyn Hutchins. Upon the death of the said Mary Evelyn Hutchins, to pay over, transfer and deliver to George R. Granger, Jr. the son of the said Mary Evelyn Hutchins, the balance, if any, of the remaining trust corpus and any remaining unpaid or accrued income in said trust, free, clear and discharged of all trusts.

But in the event that the said Mary Evelyn Hutchins predeceases me, it is my intention that the trust hereinabove provided for the benefit of the said Mary Evelyn Hutchins shall be null, void and of no effect and the money which would otherwise have constituted the corpus of said trust, I give and bequeath to Howard F. Knipp.

Item 16.—All the rest, residue and remainder of my property and estate, I hereby give, devise and bequeath to my said nephew, Howard F. Knipp, absolutely.

Item 17.—I direct that all inheritance taxes be paid out of my estate, to the end that all of my legatees named herein shall receive the full amounts of their respective legacies.

Item 18.—In the event that my estate is not sufficient to pay all of the legacies in full, I direct that all of said legacies shall abate proportionately.

Item 19.—I hereby appoint my said nephew, Howard F. Knipp, to be the Executor of this my Last Will and Testament, and I do hereby authorize and empower him to sell any property in my estate, at private or public sale, in order to carry out the intentions and purposes of this my Last Will and Testament, without the necessity of applying to any court for authority so to do, and without there being any necessity on the part of purchasers to see to the application of the proceeds. I do hereby excuse my said Executor from giving bond.

In Testimony Whereof I have hereunto set my hand and affixed my seal on this, the 4th day of April, in the year nineteen hundred and forty-six.

FRANK H. KNIPP (Seal)

Signed, Sealed, Published and Declared by Frank H. Knipp, the above named Testator, as and for his Last Will and Testament, in the presence of us, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses hereto.

FRANK ARNOLD
A. RISLEY ENSOR

Codicil to the Last Will and Testament of Frank H. Knipp Dated April 4th, 1946.

Sept. 25/46—Original Frank H. Knipp

I, Frank H. Knipp, residing and domiciled in the City of Baltimore, State of Maryland, being of sound and disposing mind, memory and understanding, do hereby make, publish and declare this codicil to my Last Will and Testament heretofore executed by me under date of April 4th, 1946.

I hereby give and bequeath to my nephew, Howard F Knipp, the sum of Fifty Thousand Dollars ($50,000.00) absolutely. I direct that this legacy shall be of the same grade or rank as the other pecuniary legacies set forth in my said Last Will and Testament, and I further direct that this legacy be paid free and clear of inheritance taxes in the same manner as provided by Item 17 of my said Last Will and Testament.

And in all other respects I confirm my said Last Will and Testament.

In Testimony Whereof I have hereunto set my hand and affixed my seal on this 25th day of September, in the year nineteen hundred and forty-six.

Frank H. Knipp (Seal)

Signed, Sealed, Published and Declared by Frank H. Knipp, the above named Testator, as and for a codicil to his Last Will and Testament, in the presence of us, who, at his request, in his presence, and in the presence of each other, have subscribed our names as witnesses hereto.

Minna D. Grolman
A. Risley Ensor

EXHIBIT 12-L AND BB

CHARLES H. SCHNEFFE, JR. & CO.
CERTIFIED PUBLIC ACCOUNTANTS
O'SULLIVAN BUILDING
BALTIMORE 2, MARYLAND

May 11, 1949

Mr. Howard F. Knipp,
Executor of the Estate of Frank H. Knipp,
600 South Pulaski Street,
Baltimore 23, Maryland.

Dear Sir:

We have prepared an analysis of the capital account of Frank H. Knipp, Deceased, in John C. Knipp & Sons for the period from February 1, 1947 to January 31, 1949. This analysis has been prepared directly from the books of account and records of John C. Knipp & Sons, and is reflected on the following exhibit and schedules:

Exhibit A—Frank H. Knipp, Deceased, Analysis of Capital Account in John C. Knipp & Sons, for the period from February 1, 1947, to January 31, 1949, with additions and deductions subsequent to November 21, 1947, as presently determined, applicable to the capital account.

Schedule A-1—Frank H. Knipp, Deceased, Analysis of Capital Account in John C. Knipp & Sons. Schedule of prior years adjustments.

We have also prepared a statement of the capital account of Frank H. Knipp, Deceased, in Knipp Aviation Industries, as of December 31, 1947. This statement has been prepared directly from the books of account and records of Knipp Aviation Industries, and is reflected on Exhibit B.

Very truly yours,

CHARLES H. SCHNEFFE, JR. & CO.

By GEO. H. BALD

cc: Mr. Harry E. Karr
Fidelity Building
Baltimore 1, Maryland

Exhibit A
Sheet 1

FRANK H. KNIPP, DECEASED

Analysis of Capital Account in John C. Knipp & Sons,
For the Period from February 1, 1947 to January 31, 1949
With additions and deductions subsequent to November 21, 1947, as presently determined, applicable to the capital account

Balance, February 1, 1947			$226,320.90
Deductions:			
1947			
February 25	Additional 1945 North Carolina State income tax	$ 84.49	
March 15	Balance of 1946 Federal income tax	2,796.19	
March 15 to September 15	Three quarterly payments on estimated 1947 Federal income tax	750.00	
November 15	Union Memorial Hospital bill	128.09	
November 6 to 20	Three payments of $88.00 each to Stella Reddick	264.00	
February 1 to November 21	Sundry personal items	452.50	
Prior to November 21	One-half of proceeds of sale of lumber—see note 1	15,738.10	
February 1, 1947	Adjustment of prior years inter-company account—Knipp Aviation Industries	668.05	
	Total deductions		20,876.42
Balance, November 21, 1947			205,444.48
Additions:			
1948			
December	Refund of Federal income taxes for the years 1943, 1944 and 1945—see note 2	55,194.94	
January 31	Clearing Knipp Aviation Industries inter company account	4,671.36	
	Total additions		59,866.30
			265,310.78
Deductions:			
	Prior years adjustments—schedule A-1	102,287.72	
	Payments made for account of the Estate of Frank H. Knipp, as follows:		
January 15	Fourth quarterly payment on estimated 1947 Federal income tax	68,000.00	
March 15	Balance of 1947 Federal income tax	40,043.55	
April 30	Net expense of new Plymouth for Mr. Senft	3.55	
	Total deductions		210,434.82
Balance, January 31, 1949			$ 54,875.96

Exhibit A
Sheet 2

FRANK H. KNIPP, DECEASED

Analysis of Capital Account in John C. Knipp & Sons,
For the Period from February 1, 1947 to January 31, 1949
With additions and deductions subsequent to
November 21, 1947, as presently determined,
applicable to the capital account

Note 1: Cash proceeds from the sale of lumber and Carroland Farm, in the amount of $26,954.52, have been excluded from the above analysis, since this item was reported separately.

Note 2: Interest received on the refund of prior years Federal income taxes, in the amount of $13,516.55, and sundry prior years state income taxes paid, totaling $9,114.67, have also been excluded from the above analysis, since they represent taxable income and deductions of the estate after date of death.

Schedule A-1

FRANK H. KNIPP, DECEASED

Analysis of Capital Account in John C. Knipp & Sons
Schedule of Prior Years Adjustments

Personal items, January 31, 1942	$ 56.00
Knipp Furniture Co. sales adjustment, January 31, 1943	200.00
Personal work, January 31, 1944 to January 31, 1946	443.87
Traveling expense entry, January 31, 1946, disallowed by Revenue Agent	21,942.02
War Bonds for years' ended January 31, 1943 and 1944 charged to expense in error	3,750.00
Adjustment of auto depreciation for year ended January 31, 1945	129.50
Profit and Loss Adjustment, year ended January 31, 1941-40%	1,144.33
Profit and Loss Adjustment, year ended January 31, 1942-40%	1,617.61
Profit and Loss Adjustment, year ended January 31, 1943, 1944 and 1945-40%	69,094.87
Profit and Loss Adjustment, year ended January 31, 1946-40%	160.71
Profit and Loss Adjustment, year ended January 31, 1947-50%	8,848.81
Total—exhibit A	$102,387.72

Exhibit B

FRANK H. KNIPP, DECEASED

Statement of Capital Account in Knipp Aviation Industries
As of December 31, 1947 as presently determined,
excluding real estate and improvements

Balance, December 31, 1947	$137,485.38
Deduct:	
One-half of depreciated cost of real estate and improvements, which have been appraised separately	132,162.22
Balance, December 31, 1947, excluding real estate and improvements	$ 5,323.16

EXHIBIT 13-M

THIS AGREEMENT, Made this first day of February, 1948, by and between HOWARD F. KNIPP, surviving partner of the firm of John C. Knipp & Sons, and as Executor of the Estate of Frank H. Knipp, a deceased partner, of Baltimore, Maryland, of the first part, and KNIPP & COMPANY, INC., a Maryland corporation, of the second part.

WITNESSETH, that the party of the first part finds it necessary, owing to the death of Frank H. Knipp, a partner at the time of his death in John C. Knipp & Sons, *and because of the undetermined interest of the said Frank H. Knipp*, deceased, in the partnership of John C. Knipp & Sons; and for the further reason of the many problems growing out of contracts that the firm of John C. Knipp & Sons held with agencies of the United States Government and which contracts have not been finally settled for; and for the reason that there are many tax questions and other problems involved growing out of war work performed by the firm of John C. Knipp & Sons, and

WHEREAS, the firm of John C. Knipp & Sons has a number of contracts now in the course of being completed, which contracts, for the reasons hereinbefore set forth, should be taken over and completed by a separate organization other than John C. Knipp & Sons:

THEREFORE, the said Howard F. Knipp has caused to be formed a corporation under the laws of the State of Maryland under the firm name of Knipp & Company, Inc., as the successor to John C. Knipp & Sons, and has agreed, as surviving partner of said firm, with said corporation as follows:

1. To lease for three years beginning February 1, 1948, and terminating on January 31, 1951, the whole of the plant and warehouse, including machinery, auto-truck and cars belonging to John C. Knipp & Sons located at 600 S. Pulaski Street, Baltimore, and also the warehouse owned by the partnership located at the southeast corner of Chesa-

peake Avenue and Hanover Street, Baltimore, at an annual rental of Thirty Five Thousand ($35,000.00) Dollars payable in equal monthly installments of Two Thousand Nine Hundred and Sixteen Dollars and Sixty Six cents ($2,916.66) each.

2. To assign to Knipp & Company, Inc. all unfinished contracts now held by said partnership on a basis that John C. Knipp & Sons shall share in any profits, or losses, on such contracts in the proportion that the direct costs incurred on such contracts up to February 1, 1948, bears to the total direct cost incurred on such contracts when completed.

3. Will sell to Knipp & Company, Inc. all material on hand at inventory or replacement values as carried on the books of John C. Knipp & Sons as of January 31, 1948. Further that Knipp & Company, Inc. shall have the right to designate on its stationery that it is the successor of John C. Knipp & Sons.

4. That John C. Knipp & Sons shall pay all outstanding accounts due for materials purchased and other costs incurred on uncompleted contracts as of January 31, 1948, and shall be entitled to receive all payments on contracts billed up to February 1, 1948.

Knipp and Company, Inc. hereby agrees to all of the conditions mentioned in the aforegoing paragraphs and binds itself to accept assignment of all unfinished contracts held by John C. Knipp & Sons as of February 1, 1948, and agrees to complete such contracts, and that it will pay the rental as herein set forth and keep in ordinary repair the plants and machinery hereby leased and return the same to John C. Knipp & Sons at the end of this agreement in as good condition as when received (natural wear and tear accepted).

All building and machinery together with raw stock on hand shall be insured against fire in an amount mutually agreed on with loss payable thereunder as their respective interests may appear.

All insurance premiums on buildings and plant machinery shall be paid by John C. Knipp & Sons; all insurance premiums on inventory and office equipment and supplies, including automobiles or trucks, shall be paid by Knipp & Company, Inc. with loss payable as their respective interests may appear.

If the plant at 600 S. Pulaski shall be partially destroyed by fire not exceeding 25% of its effectiveness then the insurance money shall be immediately applied to rebuilding such destroyed part. If, however, the plant or warehouse shall be destroyed to the extent that they cannot be effectively used by Knipp & Company, Inc., then in that event the rent hereby to be paid shall be cancelled until such time as it may be determined between the parties hereto as to whether said plant or warehouse will be rebuilt.

THIS AGREEMENT shall continue for one (1) year and thereafter from year to year, subject to the right of either party, after the first year, to cancel this Agreement upon sixty (60) days' written notice.

As WITNESS the hand and seal of the party of the first part, and the corporate seal and signature of H. Franklin Knipp, Vice-President of the party of the second part.

JOHN C. KNIPP & SONS

By: HOWARD F. KNIPP/S (SEAL)
Howard F. Knipp, surviving partner and *Executor of Estate of Frank H. Knipp, a deceased partner.*

TEST:
H. E. KARR/S

KNIPP & COMPANY, INC.

By: H. FRANKLIN KNIPP/S
H. Franklin Knipp
Vice President.

H. E. KARR/S

EXHIBIT 17-Q

KNIPP AND COMPANY, INC.
MINUTES OF THE FIRST MEETING OF
THE BOARD OF DIRECTORS

First meeting of the Board of Directors was held on the second day of February, 1948 at 11 a.m. in the forenoon at the office of Harry E. Karr, 1502 Fidelity Building, Baltimore, Maryland.

There were present Howard F. Knipp, H. Franklin Knipp and Charles R. Knipp being the Incorporators and all of the Board of Directors. Mr. Howard F. Knipp was elected temporary chairman and Mr. Charles R. Knipp was elected temporary secretary of the meeting.

The Secretary presented and read the Waiver of Notice signed by all the Directors. Same was ordered affixed to the minutes.

Harry E. Karr, counsel for the corporation, laid before the meeting a copy of the corporation's charter together with the receipt showing that bonus tax due the State of Maryland and all recording fees had been paid and that the corporation was duly incorporated and ready for business.

A copy of the charter of the corporation was ordered filed with the minutes.

Counsel for the corporation then presented to the Directors proposed By-Laws, which were read article by article and upon motion duly made and seconded and by the affirmative vote of all present, same were adopted.

It was further ordered that a copy of said By-Laws should be inserted in the minute book immediately preceding the minutes of this meeting.

Upon motion the Board proceeded to the election of officers to the Corporation for the insuing year or until their successors are duly elected and qualify. The following officers were unanimously elected.

President—Howard F. Knipp
Vice Pres.—H. Franklin Knipp
Secretary—Charles R. Knipp
Treasurer—Howard F. Knipp

The President thereupon took the chair and the Secretary proceeded to record the minutes. Chairman then stated he would like to have authorized the opening of a bank account for the corporation with the Fidelity Trust Company, Baltimore, Maryland, and that all checks and funds on deposit with the Bank should be signed by Howard F. Knipp, Treasurer or by H. Franklin, Vice President of the corporation, whereupon motion duly made and seconded and approved by all the Directors, the following resolution of authority to the Fidelity Trust Co. were adopted:

RESOLVED, that any such instruments and any instruments payable to or held by this Corporation, when drawn and/or endorsed as above provided, may be paid or cashed by the said Trust Company, or received by it for the credit of or in payment from the payee or any other holder, including any officer or agent of this Corporation, without limitation of amount and without inquiry as to the circumstances of their issue, or the disposition of the proceeds thereof, and whether drawn to the individual order of any officer or tendered in payment of his individual obligation.

RESOLVED, that endorsements on behalf of this Corporation on any and all commercial paper of any kind deposited by or on behalf of this Corporation with said Trust Company for credit or for collection or otherwise, may be made by any one of the foregoing officers or by rubber stamp endorsement without signature.

RESOLVED, that the officers of this Corporation are hereby authorized and empowered to borrow money from said Trust Company on the notes of or endorsements of the Corporation and they are further authorized to pledge

any or all of the assets of the Corporation as collateral security for said notes, signed on its behalf by the following officers, namely:

Howard F. Knipp as President or Treasurer or
H. Franklin Knipp as Vice President

RESOLVED, that all authority contained in and given by the aforegoing resolutions shall be and continue in full force and effect until revoked by a proper resolution of the Board of Directors of this Corporation and until written notice of such resolution is actually received by said Trust Company.

RESOLVED, that the Secretary of this Corporation be and he is hereby directed to deliver to said Trust Company a copy of these resolutions and the names and signatures of the officer or officers authorized to sign or countersign for this Corporation, certified under his hand and the seal of the Corporation.

The Chairman then stated the next matter of business was the authorizing of the sale of the Corporation's capital stock and that he proposed that the Corporation at this time approve sale of four thousand (4,000) shares of the Corporation's stock without nominal par value at Twenty Five ($25.00) Dollars a share and that he be given an option to take same up within the next sixty (60) days at the price of Twenty Five ($25.00) Dollars per share payable in cash, whereupon motion duly made and seconded it was

RESOLVED, that the Corporation open books of subscription to four thousand (4,000) shares of its capital stock without nominal par value at a price of Twenty Five ($25.00) per share payable in cash, and

FURTHER RESOLVED, that Mr. Howard F. Knipp be given an option to purchase same within sixty (60) days from date.

The Chairman then stated that, as all the Board was aware, he was the surviving member of the firm of John C. Knipp & Sons and as surviving partner, due to the death of Mr. Frank H. Knipp, he deemed it necessary that *the partnership be liquidated* due to the many problems of re-negotiating with the United States Government for the settlement of war contracts that the firm had as also the many tax problems and that, as a member of that firm, he had found it advisable to create the present Corporation; that he desired the present Corporation to lease the entire physical property belonging to the firm of John C. Knipp and Sons and to take over from said firm all unfinished contracts with the right to purchase any inventories that the old firm had on hand; also that this Corporation would rent from the firm of John C. Knipp & Sons all automobiles and trucks owned by the firm of John C. Knipp & Sons, that he as the surviving partner of the firm and *as the Executor* of the Estate of Frank H. Knipp has fixed the rental as Thirty Five Thousand ($35,000.00) Dollars per year as a fair rental for the physical properties to be taken over and submitted herewith a form of lease. Mr. Knipp further stated that before lease was finally made effective he desired approval of this Board that such a lease would be acceptable to the Corporation also that before it was executed on the part of John C. Knipp & Sons and as Executor of the Estate of Frank H. Knipp, he personally would like to have the terms of the lease approved by outside appraisers. After full discussion of the matter, motion was duly made and seconded and upon the affirmative vote of the Directors, Mr. Howard F. Knipp not voting, the following resolution was passed:

RESOLVED, that the Vice President of this Corporation be and he is hereby authorized on behalf of this Corporation to enter into an agreement of lease between this Corporation and Howard F. Knipp, as surviving partner of John C. Knipp & Sons and as *Executor* of the Estate of Frank H. Knipp, deceased partner. Said lease being

in the form submitted at this meeting and at a rental of Thirty Five Thousand ($35,000.00) Dollars annually, the lease submitted to this meeting be made a part of these minutes.

The next matter of business before the meeting was the fixing of the salary of the President, Vice President and Secretary. After due consideration, and in view of the volume of business the Corporation expects to do, which will be largely of the same character and size of business that the old firm of John C. Knipp & Sons has done, to which this form is successor, it was upon motion duly made, seconded and passed.

RESOLVED, that the salary of Mr. Howard F. Knipp, as President and Treasurer of the Corporation, be fixed at Twenty Five Thousand ($25,000.00) Dollars per year, payable in monthly installments, and that the salary of H. Franklin Knipp, as Vice President, be fixed at Six Thousand ($6,000.00) Dollars per year, payable in monthly installments, and that the salary of Charles R. Knipp, as Secretary, be fixed at Six Thousand ($6,000.00) Dollars per year, payable in monthly installments.

There being no further business the meeting adjourned.

/s/ Charles R. Knipp

* * * * * * * * * *

Additional Stipulation of Facts, Docket Nos. 42545, 50153, and 50154

The stipulation of facts and the oral and written testimony adduced at the hearing before the Tax Court in Dockets No. 50153 and 50154 on February 8, 1954, is hereby incorporated as part of the record in Docket No. 42545. In addition it is hereby stipulated that for the purpose of this proceeding the following facts relevant to Docket No. 42545 shall be accepted as facts without prejudice to the right of either party to introduce other and further evidence not inconsistent therewith.

1. Howard F. Knipp, the petitioner in Docket No. 42545, is the executor of the last will and testament of Frank H. Knipp. The estate tax return here involved was filed with the Collector of Internal Revenue for the District of Maryland. A copy of this return is attached hereto and marked Exhibit 35-CC.

2. At Frank H. Knipp's death on November 21, 1947, eleven insurance policies on his life, at issue in this proceeding, were outstanding. Copies of these policies, except for Fidelity Mutual Life Insurance Company policy #478056 which is not available, are attached hereto and marked Exhibits 36-DD through 45-MM. A schedule showing the insuring company; the face amount of each policy; the original beneficiary; the date each policy was issued; the dates each policy was assigned to designated beneficiaries and to John C. Knipp & Sons, except for the assignment of Sun Life Insurance Co. of Canada Policy No. 1,011,753, which is in dispute; the cash surrender value of each policy on January 31, 1947; the value of each policy on the death of Frank H. Knipp is attached hereto and marked Exhibit 46-NN.

3. Attached hereto and marked Exhibit 47-00 is a schedule showing the amount and the percentage of premium payments made before January 10, 1941, and after January 10, 1941 on the eleven insurance policies referred to paragraph 2 above.

4. The ledger accounts of John C. Knipp & Sons (partnership), including the capital and drawing accounts of Frank H. Knipp, Howard Knipp, and John C. Knipp, disclose that these drawing accounts and capital accounts were not charged with the insurance premiums paid on the policies referred to in paragraph 2 of this Additional Stipulation of Facts, but in computing the net distributable earnings of the partnership, John C. Knipp & Sons, per books, for each year the premiums on these policies were deducted from earned income (but not from distributable

income for federal tax purposes), and this net income after deducting the premiums on said policies was divided as follows:

Year Ending	*Frank H. Knipp*	*Howard Knipp*	*John C. Knipp*
January 31, 1942	40%	30%	30%
January 31, 1943	40%	40%	20%
January 31, 1944	40%	40%	20%
January 31, 1945	40%	40%	20%
January 31, 1946	40%	40%	20%
January 31, 1947	50%	50%	

5. As of January 31, 1947, the cash surrender value of the partnership policies on the life of Howard F. Knipp amounted to $11,542.79.

6. As of the date of his death Frank H. Knipp owed additional debts, not listed on the estate tax return, which have been paid subsequent to his death, as follows:

(a) Federal income tax deficiency for 1945 and 1946	$ 24,181.00
(b) Federal income tax for 1947	108,043.55
(c) State income tax liabilities	9,114.67
(d) Alexander & Alexander for insurance	3.55

The sum of $108,043.55 for federal income tax for 1947 and the sum of $3.55 for insurance were deducted from decedent's capital account in computing his interest in the partnership trading as John C. Knipp & Sons, as reported in Schedule F of the estate tax return and analyzed in Exhibit 12-L. The sum of $9,114.67 was not deducted on the estate tax return but was allowed as a deduction in computing the partnership interest of $281,180.90 stated in the notice of deficiency. If these amounts are not proper deductions in computing the capital interest of the decedent, then they are deductible in Schedule K of the estate tax return as additional Debts of the Decedent.

The sum of $24,181.00 comprises a deficiency of $31,977.13 for 1946 and a refund of $7,796.13 for 1945. In addition, interest amounting to $967.24 was paid on the 1946 deficiency for the period from March 15, 1947, to November 21, 1947, and interest amounting to $779.61 was received on the 1945 refund for the period from March 15, 1946, to November 21, 1947.

7. At the date of his death Frank H. Knipp was entitled to a federal income tax refund of $55,194.94 for the years 1943-1945, which amount was received after his death. This amount was added to decedent's capital account in computing his interest in the partnership trading as John C. Knipp & Sons, as reported in Schedule F of the estate tax return and analyzed in Exhibit 12-L. If this amount is not a proper addition in computing the decedent's capital interest, then it is properly includible in Schedule F of the estate tax return as Other Miscellaneous Property. Interest in the amount of $13,516.55 was paid on this refund in December of 1948. The $13,516.55 included interest from November 21, 1947, to December, 1948, amounting to $3,311.70 and interest earned prior to November 21, 1947 amounting to $10,204.85. No part of the $13,516.55 was included as part of the gross estate in the estate tax return filed on behalf of the decedent.

8. In addition to the funeral and administration expenses deducted on the estate tax return, the estate incurred and paid funeral expenses of $50 for cemetery fees and $153 for a marker for Frank H. Kipp's grave, and additional administration expenses of $1,000.00 for lawyers' fees not deducted in the estate tax return as filed. The parties further agree that on the Rule 50 computation before entry of decision additional administrative expenses for lawyers' and accountants' fees paid after the estate tax return was filed will be allowed on the showing of proper proof thereof. In addition, allowance will be made for estate and inheritance taxes paid to the State of Maryland on the showing of proper proof thereof.

9. At the date of his death the fair market values of Frank H. Knipp's interest in the two parcels of real estate shown in Schedule A of the Estate Tax Return, as shown by subsequent sales, were $463,250.00 for Parcel 1 and $8,499.20 for Parcel 2, instead of the $125,000.00 and $5,200.00 originally returned.

10. The income of John C. Knipp & Sons from February 1, 1947 to the death of Frank H. Knipp on November 21, 1947 was $351,344.09. Included in this amount was $20,700.00 representing $18,887.50 withdrawn by the decedent as "salary" prior to his death and $1,812.50 to which the decedent was entitled as "salary" at the time of his death.

11. Attached hereto and marked Exhibit 48-PP is a schedule showing the adjustment made by the respondent to reach the net taxable estate, as adjusted by the respondent.

RANDOLPH PAUL
1614 Eye Street, N. W.
Washington, D. C.
Attorney for the Petitioner

DANIEL A. TAYLOR
Chief Counsel
Internal Revenue Service
Attorney for the Respondent

EXHIBIT 46-NN

Schedule of Partnership Life Insurance on Life of Frank H. Knipp As of Date of Death—November 21, 1947

Policy No.	Company	Face Amount of Policy	Original Beneficiary (See note 1)	Date of Policy	Date of Assignment To Designated Beneficiaries	Date of Assignment To John C. Knipp & Sons	Cash Value Set Up On Partnership Books as of January 31, 1947	Value at Death
997,286	Northwestern Mutual Life Ins. Co.	$10,000	P	7/23/13	7/23/13	3/24/31	$5,854.50	$10,091.10
2,140,557	Mutual Life Ins. Co. of N. Y.	10,000	P	4/1/14	4/1/14	2/25/31	5,796.30	10,026.28
542,800	Union Central Life Ins. Co.	10,000	E	4/3/17 (P)	8/6/17	3/13/31	7,166.86	10,045.56
375,359	Connecticut Mutual Life Ins. Co.	5,000	P	4/16/18	4/16/18	1/14/31	3,477.75	5,034.00
SUB-TOTAL A		35,000					22,295.41	35,196.94
435,172	Connecticut Mutual Life Ins. Co.	10,000	P	4/2/21	4/2/21	1/14/31	5,294.49	10,079.90
3,495,152	Mutual Life Ins. Co. of N. Y.	5,000	K	7/3/25	7/3/25	7/3/25	3,794.32	5,052.97
1,011,753	Sun Life Assurance Co. of Canada	5,000	K	3/5/26			2,354.40	5,000.00
2,328,474	Northwestern Mutual Life Ins. Co.	10,000	E	4/7/31	4/23/31	4/23/31	4,259.60	10,126.60
1,109,296	Union Central Life Ins. Co.	10,000	E	4/7/31	4/23/31	4/23/31	4,066.02	10,045.56
478,055	Fidelity Mutual Ins. Co.	10,000	K	4/17/31	4/24/31	4/24/31	4,074.30	10,012.90
478,056	Fidelity Mutual Ins. Co.	5,000	K	4/17/31	4/30/31	4/30/31	2,037.15	5,006.45
SUB-TOTAL B		55,000					25,880.28	55,324.38
GRAND TOTALS		$90,000					$48,175.69	*$90,521.32

Note 1: P—Charles J. Knipp and Walter Knipp, business partners.
K—John C. Knipp & Sons.
E—Estate of Frank H. Knipp.

*This figure is shown as $90,512.32 on the notice of deficiency.

EXHIBIT 47-OO

SCHEDULE OF PREMIUM PAYMENTS

Policy No.	Company	Premiums Paid Before 1/10/41 Amount	%	Premiums Paid After 1/10/41 Amount	%
997,286	Northwestern Mutual Life Ins. Co.	$7,305.20	80.00	$1,826.30	20.00
2,140,557	Mutual Life Ins. Co. of N. Y.	7,676.95	79.60	1,967.70	20.40
542,800	Union Central Life Ins. Co.	7,986.00	100	-0-	-0-
375,359	Connecticut Mutual Life Ins. Co.	3,581.10	76.67	1,089.90	23.33
435,172	Connecticut Mutual Life Ins. Co.	6,636.00	74.07	2,322.60	25.93
3,495,152	*Mutual Life Ins. Co. of N. Y.	4,363.61	81.02	1,022.20	18.98
1,011,753	Sun Life Assurance Co. of Canada	3,506.50	70.51	1,466.50	29.49
2,328,474	Northwestern Mutual Life Ins. Co.	5,060.00	58.82	3,542.00	41.18
1,109,296	Union Central Life Ins. Co.	4,690.50	58.82	3,286.50	41.18
478,055	Fidelity Mutual Ins. Co.	4,335.00	58.82	3,033.10	41.18
478,056	Fidelity Mutual Ins. Co.	2,166.50	58.82	1,516.55	41.18

*This policy was fully paid up on July 3, 1944. Union Central Life Insurance Policy No. 542,800 was fully paid up on April 3, 1936. Premiums on the remaining 9 policies were paid after the start of John C. Knipp & Sons' fiscal year in each of those years up to the decedent's death.

EXHIBIT 48-PP

SCHEDULE SHOWING ADJUSTMENTS MADE BY THE RESPONDENT TO REACH THE NET TAXABLE ESTATE, AS ADJUSTED BY THE RESPONDENT

Net Estate per return		$187,780.49
Add: Additional value of real estate		41,549.20
Additional value of stocks and bonds		542.49
Insurance		90,512.32
Salary due decedent		1,812.50
Insurance refund		91.97
Total		$322,288.97
Partnership Interest per return	$ 54,875.96	
Net interest as corrected	107,724.57	
Difference	$ 52,848.61	
*Add ½ partnership income to time of death	184,948.54	237,797.11
Add interest on tax refund		13,516.55
Total		$573,602.67
Tax Adjustment		
Federal income tax for 1947	$108,043.55	
Net federal income tax deficiency for 1945-1946	24,181.00	
State income tax liabilities	9,114.67	
Total	$141,339.22	
Less: Refund for 1943-1944-1945	55,194.94	
Net Tax Adjustment		86,144.28
Net Corrected Taxable Estate		$487,458.39
Proof		
Net Estate per Notice of Deficiency		$548,593.91
Less: Duplication of assets	$36,954.52	
Net federal income tax deficiency 1945-1946	24,181.00	61,135.52
		$487,458.39

*Respondent and petitioner agree that this amount should be $154,972.05.

EXHIBIT 35-CC

UNITED STATES

ESTATE TAX RETURN

(To be executed and filed in duplicate)

Decedent's name Frank H. Knipp

Date of Death November 21, 1947

Residence (domicile) at time of death 4300 Main Avenue, Baltimore, Md.

Citizenship (nationality) at time of death United States

* * * * * * * * * *

GENERAL INFORMATION

Decedent's name Frank H. Knipp; Date of death November 21, 1947

Residence (domicile) at date of death 4300 Main Avenue, Baltimore, Md.

Year in which last domicile was established 1915.

Citizenship (nationality) at date of death United States

Place of death Union Memorial Hospital

Cause of death and length of last illness Angina pectoris.

Names and addresses of decedent's physicians: Dr. Charles W. Wainwright, 9 E. Chase Street, Baltimore, Md.

If decedent was confined in a hospital during his last illness, give name and address of hospital Union Memorial Hospital

Date of birth March 5, 1879; Place of birth Baltimore, Md.

Business or occupation Partner in Wood work manufacture

Business address 600 S. Pulaski Street

Married, single, separated, widowed, or divorced at date of death single

Number of children none

Heirs, Next of Kin, Devisees, and Legatees

(If more than five, only the names of the five principal ones are required)

Howard F. Knipp, Nephew, 204 Goodwood Gardens, Balto., Md.

Stella K. Reddick, Sister, 117 High St., Thomaston, Conn.

Dr. J. Edgar Knipp, Brother, 5000 Gwynn Oak Ave., Balto., Md.

Dr. Arthur R. Knipp, Brother, Lingnan University, Canton, China.

John G. Reddick, Nephew, 482 Watertown Ave., Watertown, Conn.

Did decedent die testate? yes

Were letters testamentary or of administration granted for this estate? yes

Date granted

Name and location of court Orphans Court of Baltimore City

To whom granted? (Designate whether executor, executrix, administrator, or administratrix. Explain if different from the person or persons filing return): Howard F. Knipp, Executor, 600 S. Fulaski Street.

Did the decedent at date of death own property in any State or country other than that of his last domicile? No

Place of ancillary probate proceedings, if any

Name and address of ancillary administrator or executor

Did the decedent at the time of his death have a safe deposit box held either alone or in the joint names of himself and another? yes

If so, state location Baltimore National Bank

If held jointly, give the name of the joint depositor and his relationship to the decedent

If the decedent had a safe deposit box at the time of his death indicate under what schedules in this return the contents are listed Stocks and Bonds Schedule

If any of the contents of the safe deposit box are omitted from the schedules, explain why

Did the undersigned person or persons filing return make diligent and careful search for property of every kind left by the decedent? yes

Did the same undersigned make diligent and careful search for information as to any transfers of the value of $5,000 or more made by the decedent during his lifetime without an adequate and full consideration in money or money's worth? yes

Did the same undersigned make diligent and careful search for the existence of any trusts created by the decedent during his lifetime or any trusts created by other persons under which the decedent possessed any power, beneficial interest, or trusteeship? yes

Name and address of attorney representing estate, if any Harry E. Karr, 1501 Fidelity Building, Baltimore, Md.

* * * * * * * * * *

All those three lots or parcel of ground situate partly in Baltimore City and partly in Baltimore County, in the State of Maryland, and described as follows, that is to say:

Parcel 1:—

BEGINNING for the same at a stone heretofore planted at the beginning of a tract of land conveyed by Deed from Fielder C. Slingluff, et al. to Charles G. Carmine and wife, dated November 28, 1896, and recorded among the Land Records of Baltimore County in Liber L.M B. No. 219, folio 472, and running thence with and binding on the first line of said tract as now surveyed (1) north 1 degree 21 minutes west 2302.28 feet to a stone heretofore planted on the south side of Smith Avenue at the end of said line, thence leaving the outlines of said tract and bounding on the south side of Smith Avenue as now surveyed the three following courses and distances to wit: (2) north 71 degrees 57 minutes west 92.98 feet to the angle in a stone wall there situate (3) south 88 degrees 34 minutes west 1889.22 feet (4) south 82 degrees west 973.2 feet to intersect the eighth line of said whole tract at a point on the south side of Smith Avenue south 3 degrees 2 minutes 30 seconds west 32.81 feet from a stone heretofore planted at the beginning of said line, thence with said eighth line (5) south 3 degrees

2 minutes 30 seconds west 1356 feet to a stone heretofore planted at the end thereof, thence still bounding on the outlines of said whole tract (6) south 2 degrees 40 minutes 30 seconds east 524.54 feet to a stone heretofore planted (7) north 89 degrees 30 minutes 30 seconds east 511.63 feet to a stone heretofore planted (8) south 43 degrees 7 minutes 30 seconds east 329.98 feet to the center of Clarks Lane, thence with the center of Clarks Lane (9) south 13 degrees 23 minutes west 664 feet, thence still binding on the outlines of said whole tract (10) south 68 degrees 58 minutes east 782 feet to the beginning of the fourteenth line thereof, thence with the said fourteenth line (11) south 2 degrees 40 minutes west 231.6 feet to the end of the first course of a parcel of land conveyed by Charles G. Carmine and wife to Frederick Bauernschmidt by deed dated November 13, 1914 and recorded among the aforesaid Land Records in Liber W.P.C. No. 436, folio 585, thence reversely with said course by an 8 degree 46 minute curve to the right (12) 239.5 feet to intersect the sixteenth line of said whole tract at a point south 19 degrees 32 minutes west 125.91 feet from the end of said sixteenth line, thence, with said sixteenth line (13) north 19 degrees 32 minutes east 125.91 feet to the end thereof, thence still bounding on the outlines of said whole tract (14) south 68 degrees 58 minutes east 1693 feet to a stone heretofore planted being situated at the beginning of the eighteenth line of the aforesaid whole tract and on the north side of the road now called Carroll Road, thence with said eighteenth line (15) north 1 degree 38 minutes west 1576.28 feet to the place of beginning. Containing 215.39 acres, more or less.

Excepting and reserving from the above tract all that 16 foot right of way set aside and apart for the use of the public in lieu of that portion of Clarks Lane duly closed and vacated by ordinance of the Mayor and City Council of the City of Baltimore in Ordinance No. 784, dated April 20, 1931.

Parcel 2:—

BEGINNING for the same at a stone heretofore planted at the end of the first line of the first tract of land described in a deed from Bertha P. Hill and Anthony S. Hill, her husband, to Edward Schaefer dated November 19th, 1912 and recorded in Liber W.P.C. No. 406, folio 58, among the Land Records of Baltimore County, Maryland, the same being the beginning of a tract of land described in a mortgage from Theodore Messersmith, et al. to J. Charles Kemper, et al. dated September 18th, 1925 and recorded in Liber S.C.L. No. 4480, folio 306, etc. among the Land Records of Baltimore City, Maryland, and running thence and bounding on the first line of said tract, as now surveyed, (1) north eighty-eight degrees fifty-one minutes thirty seconds east five hundred sixty-four and eighty-eight one-hundredths feet to a stone heretofore planted at the end of said line; thence with the second line of said tract, (2) north one degree six minutes west three hundred thirty-three and five-tenths feet to the end of said line; thence with the third line of said tract, and along the center line of Green Spring Avenue, (3) north one degree six minutes west one thousand five hundred sixty-nine and eighty-three one-hundredths feet to the center of Smith Avenue, said point being the beginning of the fourth line of said tract; thence with said fourth line, (4) south eighty-eight degrees, fifty-four minutes west fifty-two and thirty-three one-hundredths feet to the end thereof on the southwest side of Smith Avenue, thence with the fifth line of said tract, and along the southwest side of Smith Avenue (5) north sixty-nine degrees, fifty-three minutes west five hundred forty-four and five-tenths feet to the beginning of the tract from Hill to Schaefer as aforesaid, thence bounding on the first line of said tract, (6) south fifty-eight feet as now surveyed, to the place of beginning. Containing twenty-five and seventy-four one-hundredths acres of land, more or less.

SAVING and excepting therefrom ninety-two one-hundredths acres contained in the bed of Green Spring Avenue as laid out fifty feet wide.

Parcel 3:—

BEGINNING for the same on the southwest side of Smith Avenue at a stone heretofore planted at the end of the third line of the first parcel of land described in a deed from Bertha P. Hill and Anthony S. Hill to Edward Schaefer, dated November 19, 1912 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 406, folio 58, and running thence bounding on the southwest side of Smith Avenue and with the fourth line of said first described parcel as now surveyed (1) south 70 degrees 24 minutes east 551.25 feet to the beginning of said parcel, thence with the first line of said parcel (2) south no degrees 58 minutes east 2100.77 feet to a stone heretofore planted at the end thereof, thence with the second line of said parcel (3) south 88 degrees 8 minutes 30 seconds west 500.87 feet to a stone heretofore planted at the beginning of the first parcel of land described in a deed from Fielder C. Slingluff, et. al. Trustee, to Charles G. Carmine and wife, dated November 28, 1896 and recorded among the aforesaid Land Records of Baltimore County in Liber L.M.B. No. 219, folio 472, thence with the first line of said tract (4) north 1 degree 21 minutes east 2302.28 feet to the place of beginning. Containing 25.68 acres, more or less.

BEING the same property described in a deed from Curtiss Wright Corporation to Frank H. Knipp et al, dated December 27, 1945 and recorded among the Land Records of Baltimore City in Liber M.L.P. No. 6850, folio 107; and recorded in Baltimore County in Liber R.J.S. No. 1419, folio 174.

Improved by 2 Hangars

Value $125,000.00

½ Interest
Lot #35 Plat of Millers Island Land Co.
See deed J.W.B. No. 1505, folio 562
Unimproved $ 100.00
Lot #24 Plat of Millers Island Land Co.
See deed R.J.S. No. 1374, folio 536
Improved by 1 story frame cottage 5,000.00
Lot #34 Plat of Millers Island Land Co.
See Deed J.W.B. No. 1600, folio 445
Unimproved 100.00

$5,200.00

GROSS ESTATE

SCHEDULE A

REAL ESTATE

Did the decedent, at the time of his death, own any real estate in the United States? yes (Answer "Yes" or "No")

Item No.	Description	Value at date of death
1	Three lots or parcels of ground situate partly in Baltimore City and partly in Baltimore County in the State of Maryland as described more fully in the appraisal filed in the Orphans Court of Baltimore City, copy of which is attached ½ interest	$125,000.00
2	Two unimproved lots, Nos. 35 and 34, and one improved lot No. 24 shown on Plat of Millers Island as described more fully in the appraisal filed in the Orphans Court of Baltimore City, copy of which is attached	5,200.00
	Total (also enter under the Recapitulation, Schedule O)	$130,200.00

SCHEDULE B

* * * * * * * * * * *

STOCKS AND BONDS

(1) Did the decedent, if a resident or citizen of the United States, own any stocks or bonds, regardless of situs, at the time of his death? Yes. (Answer "Yes" or "No.")

(2) Did the decedent, if a nonresident not a citizen of the United States, own, at the time of his death, any stocks or bonds situated in the United States as explained in the instructions? ..... (Answer "Yes" or "No.")

Item No.	Stocks	Ctf. No.	Description	Date	Value at date of death
1	20 shs.	PL 4771	Balto. Trans. Co. Pfd. $100 Par	1/2/47 @18	$ 360.00
2	241 "	73368	Manhattan Bond Fund Capital $.10 Par	3/3/47 @7	1,687.00
3	250 "	BD 8443	N.Y. Stock, Inc. Special Stk. Bldg. Supply Ind.	9/25/46 @8	2,000.00
4	177 "	71366	Manhattan Bond Fund, Inc. Capital $.10 Par	12/23/46 @8	1,416.00
5	100 "	CP 1254	Sommers Drug Stores Co. Pfd. $5. Par $.50 Cum. Pfd.	10/14/47 @8	809.00

	Bonds		Number	
6	$1000. U.S.A. Treas. 2½%	12/15/63-68	111561A @102	1,020.00
	Int. Accrued	6/15/47	11/21/47	10.86
7	1000. U.S.A. Treas. 2½%	12/15/63-68	111562B @102	1,020.00
	Int. Accrued	6/15/47	11/21/47	10.86
8	1000. U.S.A. Treas. 2½%	12/15/63-68	111559K @102	1,020.00
	Int. Accrued	6/15/47	11/21/47	10.86
9	1000. U.S.A. Treas. 2½%	12/15/63-68	111560L @102	1,020.00
	Int. Accrued	6/15/47	11/21/47	10.86
10	1000. U.S.A. Treas. 2½%	12/15/63-68	111558J @102	1,020.00
	Int. Accrued	6/15/47	11/21/47	10.86
11	100. U.S.A. Treas. Series E		11/24/47 C134691955E	75.00
12	100.	same	10/30/47 C134691861E	75.00
13	100.	same	9/29/47 C130996580E	75.00
14	100.	same	8/29/47 C130989773E	75.00
15	100.	same	7/30/47 C130979377E	75.00
16	100.	same	7/30/47 C130979378E	75.00
17	100.	same	6/30/47 C130979223E	75.00
18	100.	same	6/3/47 C130973344E	75.00
19	100.	same	4/30/47 C130962850E	75.00
20	100.	same	3/27/47 C130957782E	75.00
21	100.	same	3/1/47 C129341391E	75.00
22	100.	same	1/31/47 C129339891E	75.50
23	100.	same	1/3/47 C129339728E	75.50
24	100.	same	11/27/46 C128904021E	75.50
25	100.	same	10/26/46 C127573239E	75.50
26	100.	same	10/5/46 C127566026E	75.50
27	100.	same	9/25/46 C127565927E	75.50
28	100.	same	8/6/46 C126563879E	75.50
29	100.	same	7/25/46 C126563808E	75.50
30	100.	same	6/17/46 C125655686E	75.50
31	100.	same	6/1/46 C125655644E	75.50
32	100.	same	4/20/46 C125237512E	75.50
33	100.	same	3/23/46 C125237364E	76.00
34	100.	same	2/27/46 C121198085E	76.00
35	100.	same	2/2/46 C121197855E	76.00
36	100.	same	1/10/46 C121197704E	76.00
37	100.	same	12/13/45 C120706347E	76.00
38	100.	same	11/13/45 C120473727E	76.00

Total (also enter under the Recapitulation, Schedule O) $13,528.80

Schedule C

Mortgages, Notes, and Cash

Did the decedent, at the time of his death, own any mortgages, notes, or cash? Yes. (Answer "Yes" or "No.")

Item No.	*Description*	*Value at date of death*
1	Cash in pocket of deceased	$ 18.38
2	Cash on deposit in Mercantile Trust Company, Baltimore, Md.	16,518.37
3	Cash proceeds from the sale of lumber and Carroland Farm	36,954.52
	Total (also enter under the Recapitulation, Schedule O)	$53,491.27

Life Insurance Statement

(To be filed by Executor with Federal Estate Tax Return, Form 706)

Name of Insurance Company: The Northwestern Mutual Life Insurance Company, Milwaukee, Wis.

Name of decedent (insured): Frank H. Knipp, Date of death: 11/21/47.

Number of policy: 618 590, Date of issue: 5/2/05.

Kind of policy: 20 Payment Life, Amount of premium: $63.74 anl.

Name(s) of beneficiary(ies): Mary E. Hutchins.

Face amount of policy: $2,000.00, Amount of accumulated dividends: none.

Amount of post mortem dividends: $9.62.

Principal of any indebtedness to the company deductible in determining the net proceeds: none.

Interest on the forgoing amount accrued to the date of death: none.

Amount of proceeds (if payable in one sum): $9.62.

Value of proceeds as of the date of death (if not payable in one sum): $2,000.00.

Provisions of policy with respect to the deferred payments or to the installments (attach additional sheet if necessary): Option "B", limited installments for 10 years quarterly.

Amount of installments: $203.21 (2 Pol. Coll.).

Date of birth of any person the duration of whose life may measure the number of payments: none.

Amount applied by the insurance company as a single premium representing the purchase of the installment benefits: $2,000.00.

Basis (mortality table and rate of interest) used by the insurer in valuing the installment benefits: none.

Was the insured the annuitant or beneficiary of any annuity contract issued by the company? no.

State names of companies with which decedent carried other policies and the amount of such policies, if this information is disclosed by your records: Sun Life of Canada, $5,000.00; Fidelity Mutual, $15,000.00; Mutual Life of N.Y., $15,000.00; Connecticut Mutual, $15,000.00; Union Central, $20,000.00.

The undersigned officer of the above-named insurance company hereby certifies that this statement sets forth correct and true information.

J. T. Gallagher
Superintendent of Claims

April 13 1949

Life Insurance Statement

(To be filed by Executor with Federal Estate Tax Return, Form 706)

Name of Insurance Company: The Northwestern Mutual Life Insurance Company, Milwaukee, Wis.

Name of decedent (insured): Frank H. Knipp, Date of death: 11/21/47.

Number of policy: 2 328 476, Date of issue: 4/7/31.

Kind of policy: Ordinary Life, Amount of premium, $253.00 anl.

Name(s) of beneficiary(ies): Mary E. Hutchins.

Face amount of policy: $5,000.00, Amount of accumulated dividends: none.

Amount of post mortem dividends: $63.30.

Principal of any indebtedness to the company deductible in determining the net proceeds: none.

Interest on the foregoing amount accrued to the date of death: none.

Amount of proceeds (if payable in one sum): none.

Value of proceeds as of the date of death (if not payable in one sum): $5,063.30.

Provisions of policy with respect to the deferred payments or to the installments (attach additional sheet if necessary): Option "B", limited installments for 10 years quarterly.

Amount of installments: $203.21 (2 Pol. Coll.).

Date of birth of any person the duration of whose life may measure the number of payments: none.

Amount applied by the insurance company as a single premium representing the purchase of the installment benefits: $5,063.30.

Basis (mortality table and rate of interest) used by the insurer in valuing the installment benefits: none.

Was the insured the annuitant or beneficiary of any annuity contract issued by the company? no.

State names of companies with which decedent carried other policies and the amount of such policies, if this information is disclosed by your records: See 618 590.

The undersigned officer of the above-named insurance company hereby certifies that this statement sets forth correct and true information.

J. T. GALLAGHER
Superintendent of Claims

April 13 1949

LIFE INSURANCE STATEMENT

(To be filed by Executor with Federal Estate Tax Return, Form 706)

Name of Insurance Company: New York Life Ins. Co., 51 Madison Avenue, New York, New York.

Name of decedent (insured): Frank Herbert Knipp, Date of death: 11/21/47.

Number of policy: 9 934 300, Date of issue: 7/16/27.

Kind of policy: Life, Amount of premium: A $227.85.

Name(s) of beneficiary(ies): Mary E. Hutchins.

Face amount of policy: $5,000.00, Amount of accumulated dividends .....

Amount of post mortem dividends: $13.19.

Principal of any indebtedness to the company deductible in determining the net proceeds .....

Interest on the foregoing amount accrued to the date of death .....

Amount of proceeds (if payable in one sum) .....

Value of proceeds as of the date of death (if not payable in one sum): $5,013.19.

Provisions of policy with respect to the deferred payments or to the installments (attach additional sheet if necessary): Supplementary Contract issued pursuant to a Settlement Agreement made with the insured.

Amount of installments .....

Date of birth of any person the duration of whose life may measure the number of payments .....

Amount applied by the insurance company as a single premium representing the purchase of the installment benefits .....

Basis (mortality table and rate of interest) used by the insurer in valuing the installment benefits .....

Was the insured the annuitant or beneficiary of any annuity contract issued by the company? No.

State names of companies with which decedent carried other policies and the amount of such policies, if this information is disclosed by your records: Union Central Life Insurance Co.; North Western Mutual Life Ins. Co.

The undersigned officer of the above-named insurance company hereby certifies that this statement sets forth correct and true information.

GEORGE J. CARL
Superintendent
Death Benefits Division

4/12/49

NATIONAL LIFE INSURANCE COMPANY
MONTPELIER, VERMONT

April 14, 1949

Mr. Edward Russo
909 O'Sullivan Building
The Northwestern Mutual Life Ins. Co.
Baltimore 2, Maryland

IC 423,931—Frank H. Knipp, Dec'd.—IB 5837

Dear Sir:

We have been requested by Harry E. Karr to forward form No. 712 in connection with the above numbered installment certificate.

It is not possible to use this form since it is applicable only to policies of insurance and not to an installment

certificate. We can advise, however, that the Company was holding the sum of $3,030.51 and at the death of Mr. Knipp the principal and accrued interest up to the date of death was payable to Stella K. Reddick. After we received proofs of claim we paid her a total of $3,042.47.

Very truly yours,

H. R. Pierce, Secretary

By: C. H. Bowman

CHB/j

LIFE INSURANCE STATEMENT

(To be filed by Executor with Federal Estate Tax Return, Form 706)

Name of Insurance Company: The Fidelity Mutual Life Insurance Company, Philadelphia 1, Pa.

Name of decedent (insured): Frank H. Knipp, Date of death: 11/21/47.

Number of policy: 478056, Date of issue: 4/17/31.

Kind of policy: Low Rate Life, Amount of Premium: $216.65 A.

Name(s) of beneficiary(ies): John C. Knipp and Sons and Howard F. Knipp, assignees.

Face amount of policy: $5,000.00, Amount of accumulated dividends ——

Amount of post mortem dividends: $6.45.

Principal of any indebtedness to the company deductible in determining the net proceeds ——

Interest on the foregoing amount accrued to the date of death ——

Amount of proceeds (if payable in one sum): $5,006.45.

Value of proceeds as of the date of death (if not payable in one sum) ——

Provisions of policy with respect to the deferred payments or to the installments (attach additional sheet if necessary) ——

Amount of installments ——

Date of birth of any person the duration of whose life may measure the number of payments ——

Amount applied by the insurance company as a single premium representing the purchase of the installment benefits ——

Basis (mortality table and rate of interest) used by the insurer in valuing the installment benefits ——

Was the insured the annuitant or beneficiary of any annuity contract isssued by the company? no.

State names of companies with which decedent carried other policies and the amount of such policies, if this information is disclosed by your records: Sun Life of Canada, $5,000; Mutual Life of N. Y., $15,000; Union Central, $20,000; Northwestern Mutual, $20,000; Connecticut Mutual, $15,000.

The undersigned officer of the above-named insurance company hereby certifies that this statement sets forth correct and true information.

LESLIE BERGMANN
Manager
Claim Division

4/20/49

LIFE INSURANCE STATEMENT

(To be filed by Executor with Federal Estate Tax Return, Form 706)

Name of Insurance Company: The Fidelity Mutual Life Insurance Company, Philadelphia 1, Pa.

Name of decedent (insured): Frank H. Knipp, Date of death: 11/21/47.

Number of policy: 478055, Date of issue: 4/17/31.

Kind of policy: Low Rate Life, Amount of premium: $433.30 A.

Name(s) of beneficiary(ies): John C. Knipp and Sons and Howard F. Knipp, assignees, c/o Howard F. Knipp, 609 S. Pulaski Street, Baltimore, Maryland.

Face amount of policy: $10,000.00, Amount of accumulated dividends ——

Amount of post mortem dividends: $12.90.

Principal of any indebtedness to the company deductible in determining the net proceeds ——

Interest on the forgoing amount accrued to the date of death ——

Amount of proceeds (if payable in one sum): $10,012.90.

Value of proceeds as of the date of death (if not payable in one sum) ——

Provisions of policy with respect to the deferred payments or to the installments (attach additional sheet if necessary) ——

Amount of installments ——

Date of birth of any person the duration of whose life may measure the number of payments ——

Amount applied by the insurance company as a single premium representing the purchase of the installment benefits ——

Basis (mortality table and rate of interest) used by the insurer in valuing the installment benefits ——

Was the insured the annuitant or beneficiary of any annuity contract issued by the company? no.

State names of companies with which decedent carried other policies and the amount of such policies, if this information is disclosed by your records: Sun Life of Canada, $5,000; Mutual Life of N. Y., $15,000; Union Central, $20,000; Northwestern Mutual, $20,000; Connecticut Mutu ', $15,000.

The undersigned officer of the above-named insurance company hereby certifies that this statement sets forth correct and true information.

LESLIE BERGMANN
Manager
Claim Division

4/20/49

LIFE INSURANCE STATEMENT

(To be filed by Executor with Federal Estate Tax Return, Form 706)

Name of Insurance Company: The Northwestern Mutual Life Insurance Company, Milwaukee, Wis.

Name of decedent (insured): Frank H. Knipp, Date of death: 11/21/47.

Number of policy: 997 286, Date of issue: 7/23/13.

Kind of policy: Ordinary Life, Amount of premium: $260.90 anl.

Name(s) of beneficiary(ies): John C. Knipp & Sons.

Face amount of policy: $10,000.00, Amount of accumulated dividends: none.

Amount of post mortem dividends: $91.10.

Principal of any indebtedness to the company deductible in determining the net proceeds: none.

Interest on the foregoing amount accrued to the date of death: none.

Amount of proceeds (if payable in one sum): $10,091.10.

Value of proceeds as of the date of death (if not payable in one sum): none.

Provisions of policy with respect to the deferred payments or to the installments (attach additional sheet if necessary)

As above stated proceeds of policy paid in one sum.

* * * * * * * * * * *

Was the insured the annuitant or beneficiary of any annuity contract issued by the company? no.

State names of companies with which decedent carried other policies and the amount of such policies, if this information is disclosed by your records: See 618 590.

The undersigned officer of the above-named insurance company hereby certifies that this statement sets forth correct and true information.

J. T. GALLAGHER
Superintendent of Claims

April 13 1949

LIFE INSURANCE STATEMENT

(To be filed by Executor with Federal Estate Tax Return, Form 706)

Name of Insurance Company: The Northwestern Mutual Life Insurance Company, Milwaukee, Wis.

Name of decedent (insured): Frank H. Knipp, Date of death: 11/21/47.

Number of policy: 2 328 474, Date of issue: 4/7/31.

Kind of policy: Ordinary Life, Amount of premium: $506.00 anl.

Name(s) of beneficiary(ies): John C. Knipp & Sons.

Face amount of policy: $10,000.00, Amount of accumulated dividends: none.

Amount of post mortem dividends: $126.60.

Principal of any indebtedness to the company deductible in determining the net proceeds: none.

Interest on the foregoing amount accrued to the date of death: none.

Amount of proceeds (if payable in one sum): $10,126.60.

Value of proceeds as of the date of death (if not payable in one sum): none.

Provisions of policy with respect to the deferred payments or to the installments (attach additional sheet if necessary)

As above stated proceeds of policy paid in one sum.

Was the insured the annuitant or beneficiary of any annuity contract issued by the company? no.

State names of companies with which decedent carried other policies and the amount of such policies, if this information is disclosed by your records: See 618 590.

The undersigned officer of the above-named insurance company hereby certifies that this statement sets forth correct and true information.

J. T. GALLAGHER
Superintendent of Claims

April 13 1949

SCHEDULE D

INSURANCE

(1) Was any insurance on life of decedent receivable (*a*) by his estate? No, or (*b*) by beneficiaries other than the estate? yes (Answer "Yes" or "No.")

(2) Was there any insurance on the decedent's life which is not included in the return as a part of the gross estate? No (Answer "Yes" or "No.") if so, a complete explanation as to all such insurance must be submitted.

7-G

(Mr. Frank Knipp died November 21, 1947)

SHEET NO. _____

ACCOUNT NO. (1)

TERMS

RATING

CREDIT LIMIT

NAME Capital Account

ADDRESS Frank H. Knipp, Personal

A 015 MADE IN U. S. A.

DATE	ITEMS	FOLIO	✓	DEBITS
1946	Per Auditors Sec			
Jan 31	J.E. 1-140 From Personal a/c			8492010
1947				
Jan 31	Knipp Aviation Per Auditor J-140			5978115
Dec 3	Rec'd Plymouth from Light	CD13		162877
1945				
Jan 15	Federal Taxes 4th Qtr 1944	CD13		6800000
Jan 31	To Mrs. Liddick	J58		88000
Jan 31	Personal Jobs 1947	J58		213333
Mar 15	~~Cal Federal Tax 1944~~	~~CD13~~		~~10013355~~
Mar 15	~~Int of Mtg 1944~~	~~CD13~~		~~1070413~~
Apr 12	~~Ag Sale 1947~~	~~CD16~~		~~1111292~~
13	~~" " 1947~~	~~CD16~~		~~108000~~
Jan 31	acct. adj (personal 1/31/47)	J58		5600
31	do (Knipp trans. adj.)	J58		20000
31	do (Personal work-1944-46)	J58		44387
31	do (Travel exp adj-1/31/47)	J58		2194202
31	do (Bonus Cal Exp-1943-45)	J58		375000
31	do (Cash disc adj-1/1/45)	J58		10960
31	do (1/31/41 adj.)	J58		114933
31	do (1/31/42 adj.)	J58		161761
31	do (1/31/43-45 adj.)	J58		6909487
31	do (1/31/47 adj.)	J58		384881
31	do (1/31/46 adj.)	J58		16031
31	do	J58	(2)	31250
31	do (Close Knipp Ave Bal)	J58		2040704
31	do (Reversal entry)	J58	(2)	599823
31	do	56		663105
				34739147

DATE	ITEMS	FOLIO	✓	CREDITS
1942				
Jan 31	Balance From Old Ledger			11638268
1943				
Jan 31	Profit for 1942			16759446
July 31	Adj. of 1942 Profit			201025
1944				
Jan 31	Bal From Personal a/c			3592333
1945				
Jan 31	Bal From Personal a/c			10089298
1946				
Jan 31			✓	53977.99
1947				
Jan 31	Bal From 1942 Per Auditor 1/31/47			80000
Jan 31	From Personal a/c J-140			3124406
Sept 30	Adj Knipp Aviation 1/31/47 J-3		(3)	8744883
1948				
Jan 15	Add Capital Cash J55			3695400
Jan 31	Add J58		(2)	312500
31	J58		(1)	58000
31	(From Knipp Aviation a/c) J58			50000
31	75,317.87 J58			7531787
				40370146

(1) Per Auditors 1/31/47

(2) Per Auditors 1/31/47

(3) Per Auditors 1/31/47

ACCOUNT NO. _____ SHEET NO _____

NAME Capital account
ADDRESS Frank H. Knapp

TERMS
RATING
CREDIT LIMIT

DATE	ITEMS	FOLIO	✓	DEBITS
1948				
Mar 15	Est. Income tax (1947)	CD15	✓	40 043 55
15	Est. of Miss. (1947)	CD15	✓	1 070 40
				41 113 95
Apr 13	" " Ala. - (1947)	CD16	✓	1 182 93
13	" " N.J. - (1947)	CD16	✓	1 080 00
				43 334 88
30	Alex. v Alex.	J61	✓	24 88
				43 359 76
July 31	Payment to St. Pedrick "1/2-1/2/47	J62	✓	764 00
				42 623 76
Dec 31	Est. Income tax - 1948 - (Approximate) Comp. of Miss.	J64	✓	5 982 68
31	Miss. Inc. tax 1946	CD17	✓	78 05
	State Dept of Revenue -			
31	Ala. Inc. tax - 1946	CD17	✓	7 87
	Coll. of Revenue -			
31	La. Inc. tax 1946	CD17	✓	698 40
	Comp. of Miss.			
31	Miss. Inc. tax 1946	CD17	✓	49 40
	State Tax Comm.			
31	Ky. Inc. tax - 1947	CD17	✓	7 37
				49 407 10
1949 Jan 31	Balance			96 232 36
				145 679 46
1949 Feb. 8	State of La. - 1946 Inc. Tax	CD17		69 84
9	" " Ala. 1946 Pen & Int.	"		2 84
24	Coll. Int. Rev. - 1948 Fed.	"		8881 70
				8 954 38
May 18 1951	To Estate of F.H.K.	CD94		50000 00
				-8 954 38
Jan. 31	U.S.M.C. Term claim 1/2/46	J1-9		640 76
31	U.S.M.C. Term claim 1/2/47	J1-9		432 834
				32 375 65

DATE	ITEMS	FOLIO	✓	CREDITS
1948				
Feb. 1	Balance			75 317 87
5	Cash from A. Kempf. 34608.21 27,520.87	J60	✓	1 650 40
				76 967 97
Jan 31	Est. Income tax - 1948 - Fed. 1947 - 1948 - 1949 - 96,232.36	J64	✓	68 711 49
				145 679 46
1949 Jan 31	Balance			96 232 36
Mar 18	State of Wisc - Tax refund	CR43		6977
				96 3 02 13

ACCOUNT NO. _____ SHEET NO _____

NAME Withdrawal Account -

ADDRESS Frank H Knipp

TERMS

RATING

CREDIT LIMIT _____

DATE 1946	ITEMS	FOLIO	✓	DEBITS
				7603297
June 13	Coll. Int. Rev 2nd Quarter	CD48		6952650
July 13	State of Md. 2nd Qtr.	CD48		84951
20	" " Md. Gift Tax	48		5000
20	" " La. Inc. Tax	48		5944
20	" " Del. Inc. Tax	48		3446
30	" " Miss. Income Tax	48		16275
31	" " Treas. Dept	CD48		26475
				15239150
Sept 12	State of Md. 3rd Quarter	CD51		84951
12	Coll. Int. Rev. 3rd Quarter	CD51		6952650
Dec 11	State of Md - 4th Quarter	CD57		84951
				22361994
Jan. 5	Coll. Int. Rev. - 4th Quarter	CD57		6952650
Mar 31	27 [illegible] 50			84951
	86 920.10			29314645
Mar 14	Coll. Int. Rev. 1st 1/4, 1946	CD61		25000 -
" 14	Comm of Vol 1945 Inc. Tax	CD61		1059
" 14	Comptr of Treas, Md, 1945	CD61		74096
" 14	N.C. Dept of Rev. 1945 Inc Tax	CD61		5702
" 14	Ga. Dept of Rev. 1945 Inc Tax	CD61		26490
" 14	La. " " " " "	CD61		5470
" 14	N.Y. State Tax Commission Fiscal Year	CD61		100717
May 14	Miss. Dept of Education 1/31/46	CD63		2219
June 14	Coll of Int. Rev 2nd 1/4	CD64		25000 -
July 14	Miss. Dept of Education	CD68		5567
Sept 11	Coll of Int Rev 3rd Q	67		2598
				7819498

DATE 1946	ITEMS	FOLIO	✓	CREDITS
Jan 31	From G. L.	J1946		2194202
" 31	From P&L Ac. - 1946 Prof.			18628430
				487762
				84920 10
				93106
31	To Capital Ac			29314645

ACCOUNT NO. _____ SHEET NO. Ex 8-H 2

NAME Capital Account — Howard F. Knipp.

ADDRESS

TERMS

RATING

CREDIT LIMIT

DATE 1950	ITEMS	FOLIO	✓	DEBITS	DATE 1949	ITEMS	FOLIO	✓	CREDITS
Jan. 31	K.A. Ind. balance	J1-11		2841 72	Jan. 31	Balance			101610 61
31	Schnapp fee 1/31/48 year	J66		1500 00					
31	Drawing a/c 1/31/50	J66		63986 97	Nov. 4	Deposited in Loyola Fed S/L. acct	CR47		10000 00
				68378 69					111610 61
31	Balance			73762 39					
					Dec. 23	(From airport settlement)	CR47		14670 00
									126280 61
					1950				
					Jan. 23	Grampring 138,438.89	CR47		15000 00
									141280 61
					31	Profit 1/31/50 73,762.39	J66		810 47
									142091 08
				142091 08					142091 08
1951 Jan. 31	U.S.M.C. Term claim 1/31/46	J1-9		640 76	1950				
31	USMC claim 1/31/47	J1-9		4328 33	Feb. 1	Balance			73762 39
31	USMC claim 1/31/48	J1-9		7348 58	1951 Jan. 31	Profit 1/31/51 61444 72	J1-11		1849 95
				12317 67					
31	Drawing a/c	J1-11		3111 48					
31	Balance			60183 19					
				75612 34					75612 34
1952 Jan. 31	Drawing a/c	J1-12		6550 31	1951 Feb. 1	Balance			60183 19
31	Balance			69070 85	1952 Jan. 31	U.S.M.C. Adjustment	J1-11		9753 45
					31	Profit 1/31/52	J1-12		5684 52
				75621 16					75621 16
1953					Feb. 1	Balance			69070 85
Jan. 31	Drawing a/c	J1-15		1693 30	June 6	Investment	CR53		2500 00
31	Balance			99936 09	9	"	"		10000 00
					24	"	"		12500 00
									94070 85
					May 31	Capital Airline deposit	J52		425 00
					1953				94495 85
					Jan. 31	Profit 1/31/53	J1-15		7133 54
				101629 39					101629 39
					Feb. 1	Balance			99936 09

8-H1

SHEET NO.

TERMS

RATING

CREDIT LIMIT

NAME CAPITAL ACCOUNT.

ADDRESS HOWARD F. KNIPP - PERSONAL A/c

Ex 8-H1 (1)

ACCOUNT NO

DATE	ITEMS	FOLIO	✓	DEBITS	DATE	ITEMS	FOLIO	✓	CREDITS
1946					1942				
Jan 31	From Ledger Jr 12/31/46			4372	JAN 31	BAL. FROM OLD LEDGER			5067485
1947					1943				
Jan 31	Bal from Ledger Jr			6318278	JAN 31	PER AUDIT - PROFIT			6576676
31	- - Knipp Account 12/31			5978114	JULY 31 1944	ADJ. PER AUDIT - "			2010425
				12297764	JAN 31 1945	BAL. FROM PERS. Jr			13587101
					JAN 31 1946	BAL. FROM PERS. Jr			9857339
									3811762
1948					JAN 31 1946	BAL. FROM PERS. Jr			9606927
						33414530			33418902
Jan 31	Aud. adj	J58		4200	1947				
31	do	J58		20000	Jan 31	12/31/47 - Bal Forward	Page 57		800000
30	do	J58		176804	31	1/31/47 - Acct Jr	J-1-48		33498902
30	do	J58		105825 00		212061.38			
30	do	J58		375000	Dec 30	Adj Knipp acct Jan 47	J 63		844582
30	do	J58		12950		220510.26			34343784
30	do	J58		85826	1948				
30	do	J58		121320	Jan 15	Additional Cap Invest Cash			3600000
30	do	J58		6939487		258 Sht. 68			3811762
30	do	J58		384880	31	Aud. adj	J58		1750000
30	do	J58		16070	31		J58		500000
31	do	J58		40000	31		J58		700000
31	do	J58		12699340	31		J58	-	4335000
31	do	J58		844882	31	398.381.47	J58		46370
31	do	J58		66336					844706
				44632329					
					Feb 1	Balance			39838147
1949					1949				
Jan 31	Insurance proceeds	J1-19		754307	Jan 31		J64		1222897
31	Drawing a/c	"		2653812					6206447
31	Knipp Acct. Jr. 12/31/48	"		14621.96	31	Net Income yr. end 12/31/49	J1-19		1033566
31	Adjustments yr end 12/31/48	"		2381231					5108207
				3192496					
31	Balance			1016911					
				4908207					48

SHEET NO. _____ ACCOUNT NO. 38

TERMS

RATING

CREDIT LIMIT

NAME Withdrawal Account

ADDRESS Howard F. Tripp

DATE	ITEMS	FOLIO	✓	DEBITS
1946				231750
July 9	Fed. Dept of Int.	CD65		0622
31	I. R. A. Deductions	J43		103 12795
Sept 30	Coll & Int 3rd Q 46	CD67		2500000
1947				
Jan 31	Coll & Int 4th Q 46	CD72		2500000
31	Certificate Effy	J1-140		16399
				206765 08
1947				
Feb 15	N.C. 1945 Adj State	CD1		9103
Mar 15	Coll & Int Rec Bal 1946	CD24		53975
Mar 15	" " " 1947-1st Q	CD-2		25000
June 15	" " " 2nd Q	CD 35		25000
Sept 15	" " " 3rd Q	CD 51		1130 80
				25 00
				1378 80
1948		add'd		
June 15	Coll. & Int Rec. 1947- 67400.00	CD13		67400 80
June 31	Additional	J57		200 74 24
31	Personal Jdgt. 107500.00	J58		1033 29
31	108480.64	J58		1093 29
31		J58		900 00
31		J58		1861 96
31		J58		3152 50
31		J58		1080 05 90
	—o—	J58		
Mar. 31		J61	<	24598 15
Mar 15	Federal Taxes 1947	CD15	<	64150
15	State & Md - 47	CD15	<	3026
15	Fed Taxes 1st Q-48	CD15	<	1000 88
				3739 88
Apr 15	State Ala-47	CD16	<	1100 99
15	" N.J. 47	CD16	<	91 00
31	Correction 1947 Fed. Taxes	J brot		33 58 40
				33 58 40

DATE	ITEMS	FOLIO	✓	CREDITS
1947				
July 31	Cert Credit 6/30/47	J1-140		8750 00
31	" " 12/31/47	J		134 832 30
Jan 31	" " Int & Div Dep	J		60 18 78
				206 765 08
1947				
Dec 30	From interest on Depos	J 58		7500 00
1948				31 250
Jan 31	From interest on Deposits	J58		1 211 18
31	—o—	J 58		126 993 40
				128 205 90

9-I

SHEET NO. _____ ACCOUNT NO. _____ (1)

TERMS

RATING

CREDIT LIMIT

NAME Capital Account -

ADDRESS John C. Knipp Personal A/c

DATE	ITEMS	FOLIO	✓	DEBITS	DATE	ITEMS	FOLIO	✓	CREDITS
1946					1942				
Jan 31	From Dwg a/c Bal 1/31/6			7844200	JAN 31	Bal. From Old Ledger			3611750
1947					1943				
Jan 31	From Dwg a/c Bal 1/31/7			7902200	JAN 31	Bal. From Withdrawal a/c (Year ended 1-31-43)			3364100
				15746000					6971850
					JULY 31 1944	Adj. of 1942 Profit Per Auto			1005212
1948					JAN 31 1945	Bal. From Personal a/c			4807731
									12788793
Jan 31	Personal items 1/31/42 Aud adj	J 58		19200	JAN 31 1946	Bal. From Personal a/c			5473430
31	Sales adjust Hoops Furn	J 58		10000					18262223
	do Personal work 1/31/45	J 58		450	1947 Jan 31	Bal of Profit Page 8 adj 3/31/42 Year 1942 - of 1-40			400
31	do Bonus Chg Exp. 1/31/43-44	J 58		2250.00					—
31	do auto depree. 1/31/45	J 58		6475		25,558.23 1/31/7			—
31	do adjust. a/c 1/31/44	J 58		85826	1948				18302223
31	do adjust. a/c 1/31/42	J 58		121320	Jan 31	Aud. adj	J 58		4266.54
31	do adjust a/c yrs. 1/31/43 to 1/31/45	J 58		34547.43					18728877
31	do 14,669.17	J 58		506380	1951				
				20175794	Dec 16	Return loan	CR 51		200000
Feb 1	Balance			14669174	1952 Jan 31	Balance			21991.31
1949 Feb. 9	State of Ala. 1946 Gen + Int.	CD17		176					
				14670.93					
1950 Dec. 30	Cash advance	CD100		100000					
1951 Jan 31	Addl on USMC Term. claim 1/31/46	J1-9		32038					
Apr. 6	Cash advance	CD100		100000					
June 11	Cash advance	CD101		200000					
				18991.31					
Aug. 10	" "	"		300000					
Nov. 24	" " 21991.31	CD102		200000					
				23991.31					23991.31
1952 Feb. 1	Balance			21991.31					

SHEET NO. _____ ACCOUNT NO. (2) 82

TERMS
RATING
CREDIT LIMIT

NAME Withdrawal Account -
ADDRESS John C. Knipp - Personal A/c

DATE	ITEMS	FOLIO	DEBITS	DATE	ITEMS	FOLIO	CREDITS
1942				1942			
Mar 14	Coll. Int. Rev.	D141	85577	May 1	(Foster - Collection)	J-5	16960
Apr 14	Comp. Treas. Mo	D148	11645	1943 Jan 31	Earnings - Per Audit - 20%		3444362
1943							
Jan 31	To Capital A/c		3364100				[redacted]
			3461322				3461322
1943				1944			
Feb 1	Sub. To Research Inst.	J-15	10400	Jan 31	Earnings - Per Audit		
Mar 5	Cigars - Special	J-15	1575		For Year End - Jan 31-44		11480184
" 12	Withdrawal	J-15	500000				
" 15	Coll. Int. Rev.	J-15	343707				
May 31	Furniture	J-19	21000				
31	Hosp. Feb. thru May 1943	J-19	800				
June 30	Coll. Int. Rev.	J-19	343707				
July 7	Withdrawal	J-20	500000				
Sept 11	Coll. Int. Rev.	D-18	1217132				
Dec 7	" " "	D 21	1217132				
" 17	Withdrawal	D-21	2500000				
1944							
Jan 31	Sub. Research Inst. of A.	J-23	17000				
" 31	Bal. To Cap. A/c		4807731				
			11480184				11480184
1944				1945			
Mar 14	Coll. of Int. Rev.	CD 24	275028	Jan 31	From Profit & Loss A/c		See Next page ~~[illegible]~~
Apr 14	Comp. Treas. St. Mo.	CD 25	53135		For Fiscal Year		
" 14	Coll. of Int. Rev.	CD 25	2299944		Ended Jan. 31, 1945		15354869
June 13	" " " "	CD 29	2299944				
Sept 13	" " " "	CD 33	2299944				
Dec 12	" " " "	CD 36	2299944				
28	Withdrawal for D.B.	CD 37	200000				
			9727939		Fwd.		15354869

ACCOUNT NO.

NAME Kirkland Agricultural Co

ADDRESS John C. Knipp - Personal

SHEET NO

TERMS

RATING

CREDIT LIMIT

DATE 1944	ITEMS	FOLIO	✓	DEBITS	DATE 1944	ITEMS	FOLIO	✓	CREDITS
Jan 31	Auto Cadillac Net	J5 30		9727139	Jan 01	Brought Forward			153548 69
	31 Trans. Bal. to Cap. Ac			153500					153548 69
				95 8 1439					
				57 73430					
				153548 69					153548 69
Feb 5	Withdrawal Ck #050	CJ	37	500000					
Mar 25	"	Ck # 1073 Taxes	40	323884					
" 15	"	Ck 1074 Taxes	40	3300000					
Apr 12	"	Ck	1145	164199					
May 8	"	Ck	#1246	43 2930 83					
				500000					
June 30	Prop. Withholding Tax 1945		J 3	1000					
MAY 8	State of Ga	Ck	#1251	CD 44	28816				
8	" "	Ck	1252	CD 44	13697				
8	" "	Ck	1255	CD 44	51035				
8	" "	Ck	1258	CD 44	52497				
June 18	Coll. Ind Rev. 2nd Q.	Ck	130	CD 45	3300000				
" 22	Withdrawal	Ck	1304	45	500000				
July 20	State of Ga	Ck	1365	48	500				
30	" "		1370	48	59540				
July 31	Prop.		J	34	55 [illegible]				
Aug 31	Prop.		J	36	200				
Sept 12	Coll. Ind Rev. 3rd Quarter		CD 47		33000				
Sept.	Prop.		J	36	2				
Oct 18	State of Ga.		CD 54		9115				
Nov 9	State of Ga - Filing Fee								
" 30	Prop.		J	84	1V110 83				
					1V111 283				

Ledger Memorandum

ACCOUNT NO

NAME John C Knapp

ADDRESS Personal Withdrawal Ge

SHEET NO (5)

TERMS

RATING

CREDIT LIMIT

DATE 1947	ITEMS	FOLIO	✓	DEBITS	DATE 1947	ITEMS	FOLIO	✓	CREDITS
Nov 30	Hosp. Fee No 5063.80	J53.		507780	Dec 31	Refund from Hosp. Dept	J56		1600
	—o—			200					1600
				507980	1948				
					Jan 31	—o—	J58		506380
				507980					507980
									507980

(4)

SHEET NO _____

TERMS

RATING

CREDIT LIMIT

NAME John C. Nesbitt

ADDRESS Petitdraw Sq.

ACCOUNT NO

A 015 MADE IN U.S.A.

DATE	ITEMS	FOLIO	✓	DEBITS
1945				121 11 2 83
Dec 31	Loop Ltd Eagle	J36		200
1946				
Jan 5	Withdrawal Equivalent of Q Hosp Cert	CD 59		3300000
24	" (By Equivalent to Cert	CD 59		1000000
31	Hosp. Exp. Pur	J36		200
31	Cash surrender Value of Life Insurance of J.A.			146 32
				17 14 84 16
				17 14 84 16

DATE	ITEMS	FOLIO	✓	CREDITS
1946				
Dec 31	Int on 4% Inv Bill $1140	J36		3 14 2 16
	Bal of Pr transferred to Income Expenditure			17 11 2 00
				17 14 84 16

1946

Mar 12	Withdrawal by Ck 1734	CD 61		1400000
Apr 29	"	Ck 1761	CD 62	500000
May 9	"	Ck 1778	CD 63	1500000
July 31	"	Ck 1816	CD 65	500000
" 31	Hosp Chg 5 Mos @ 2/-		J40	1000
Aug 31	Withdrawal	Ck 1841	CD 66	12000000
Oct 30	"	Ck 1897	CD 69	2000000
1947				
Jan 31	Hosp Ch 6 Mos @ 2/-		J46	12
				1902200
				1902200

1947

Dec 31	Bal of Pr transferred to Capital Ac Pr 47			1902200
				1902200

1947

Dec 25	N.S. State Tax Ref for 1/5	New Bal	CD 1	6180
Mar 18	Withdrawal by	Ck 2045	CD 2	500000
Mar 31	Hosp Chg	Mar	J49	2-
Apr 30	" "	April May	J49	4-
May 31	" "	June	J49	2-
June 30	" "	July	J50	2-
July 31	" "	Aug	J50	2-
Aug 31	" "	Sept	J50	2-
Sept 30	" "	Oct	J53	2-
				507780
				507780

Item No.	Description	Value at date of death
1	The Northwestern Mutual Life Ins. Co., Milwaukee, Wis., No. 6185901; Mary E. Hutchins, Beneficiary	$ 2,009.62
2	The Northwestern Mutual Life Ins. Co., Milwaukee, Wis., No. 2328476; Mary E. Hutchins, Beneficiary	5,063.30
3	The Union Central Life Ins. Co., Cincinnati, Ohio, No. 542801; Mary Evelyn Hutchins, Beneficiary	5,000.00
4	The Union Central Life Ins. Co., Cincinnati, Ohio, No. 481514; Mary Evelyn Hutchins, Beneficiary	5,000.00
5	The Union Central Life Ins. Co., Cincinnati, Ohio, No. 481515; Mary Evelyn Hutchins, Beneficiary	5,000.00
6	The Union Central Life Ins. Co., Cincinnati, Ohio, No. 481516; Mary Evelyn Hutchins, Beneficiary	2,000.00
7	New York Life Ins. Co., New York, N. Y., No. 9934300; Mary E. Hutchins, Beneficiary	5,013.19
8	Aetna Life Ins. Co., Hartford, Conn., No. N 11297 Ctf. 2; Group Insurance, Mrs. Stella K. Reddick, Sister, Beneficiary	5,000.00
9	National Life Ins. Co., Montpelier, Vt., No. 1 C 123931; Stella E. Reddick, Beneficiary	3,042.47
		$35,128.58

The following policies were taken out by John C. Knipp and Sons on the life of Frank H. Knipp, and the premiums paid by John C. Knipp and Sons and are believed to be not includable in the gross estate.

a	The Fidelity Mutual Life Ins. Co., Phila., Pa., Policy No. 478056; Beneficiary, John C. Knipp and Sons and Howard F. Knipp, assignee	$ 5,008.45
b	The Fidelity Mutual Life Ins. Co., Phila., Pa., Policy No. 478055; Beneficiary, John C. Knipp and Sons and Howard F. Knipp, assignee	10,012.90
c	Sun Life Insurance of Canada, Policy No. 1011753; Howard F. Knipp, surviving partner of partnership of John C. Knipp and Sons	5,000.00
d	The Mutual Life Ins. Co. of New York, Policy No. 2140557; Beneficiary John C. Knipp and Sons	10,026.28
e	The Union Central Life Ins. Co., Cin., Ohio, Policy No. 542600; Beneficiary, John C. Knipp and Sons	10,000.00
	Total (also enter under the Recapitulation, Schedule O)	$35,128.58
	Forwarded	$48,095.63
f	The Union Central Life Insurance Co., Cinn., Ohio, Policy No. 1[illegible]296; Beneficiary, John C. Knipp and Sons	10,091.12
g	The Northwestern Mutual Life Ins. Co., Milwaukee, Wis., Policy No. 997286; Beneficiary, John C. Knipp and Sons	10,091.10
h	The Northwestern Mutual Life Ins. Co., Milwaukee, Wis., Policy No. 2328474; Beneficiary, John C. Knipp and Sons	10,126.60

j	The Mutual Life Insurance Co of New York; Policy No. 3495152; Beneficiary, John C. Knipp and Sons	5,052.97
j	The Connecticut Mutual Life Ins. Co., Hartford, Conn., Policy No. 375359; Beneficiary, John C. Knipp and Sons; Assignee Attorney	5,034.00
k	The Connecticut Mutual Life Insurance Co., Hartford, Conn., Policy No. 435172; Beneficiary, John C. Knipp and Sons; Assignee Attorney	10,070.90
		$90,512.32

Schedule E

Jointly Owned Property

(1) Did the decedent, at the time of his death, own any property as a joint tenant or as a tenant by the entirety, with right of survivorship? No. (Answer "Yes" or "No.")

Total (also enter under the Recapitulation, Schedule O): None.

SPERATE

Member of a Co-Partnership trading as John C. Knipp and Sons. Interest of the deceased as established by the accountants for the partnership	$54,875.96
Member of a Co-Partnership trading as Knipp Aviation Industries. Interest of the deceased as established by the accountants for the partnership	5,323.16
	$60,199.12

HOWARD F. KNIPP
Executor of the Estate of Frank H. Knipp

Subscribed and sworn to before me, a Notary Public, this 16 day of May, 1949.

GLADYS O. TRACEY
Notary Public

1300 MAINE AVENUE

Watch, Chain & Knife	$ 40.00
Collar Button, Cuff Links, Shirt Buttons	20.00
Wearing Apparel	100.00

BED ROOM #1

2 Beds & Bedding	20.00
Crib	10.00
Bureau	5.00
Dresser	5.00
6 Chairs	6.00
Pictures	1.00
Card Table	.50
Cot	1.00

MILLER ISLAND

PORCH

Sofa	10.00
Glider	10.00
Table	1.50
2 Pc Wicker Furniture	6.00
5 Chairs	20.00
Floor Lamp	1.50
3 Tile Top Tables	1.50
Step on Can, Table, Water Set	1.50

LIVING ROOM

Couch	15.00
3 Tables	10.00
Settee	7.50
5 Chairs	15.00
4 Lamps	20.00
2 Table Lamps	5.00
Grate, Screen	3.50
Floor Covering	2.00
Coffee Table	1.50
Pictures, Mirror, Ornaments	7.50

DINING ROOM

Table	10.00
Buffet	10.00
Cellarette	10.00
China Closet, Glass	20.00
7 Chairs	15.00
Screen	2.00
Pictures, Floor Lamp	5.00

BED ROOM #2

Bed & Bedding	10.00
Dresser	5.00
Bureau	5.00
Chair	3.00
Lamp	.50
Electric Fan	2.00
Floor Covering	3.00

BED ROOM #3

2 Beds & Bedding	20.00
Dresser	5.00
Chifforobe	5.00
2 Chairs	1.00
2 Lamps	1.00

KITCHEN

Range	20.00
2 Cots	10.00
Electric Refrigerator	50.00
4 Chairs, Table	5.00
Glass, China, Cutlery, Utensils	5.00

Schedule F

Other Miscellaneous Property

(1) Did the decedent, at the time of his death, own any interest in a copartnership or unincorporated business? Yes (Answer "Yes" or "No.")

(2) Did the decedent, at the time of his death, own any miscellaneous property not returnable under any other schedule? Yes (Answer "Yes" or "No.")

Item No.	*Description*	*Value at date of death*
1	Member of a Co-Partnership trading as John C. Knipp & Sons. Interest of the deceased as established by the accountants for the Partnership	$54,875.96
2	Member of Co-Partnership trading as Knipp Aviation Industries. Interest of the deceased as established by the accountants for the partnership	5,323.16
3	Appraisal of Personal Property located at 4300 Maine Avenue, Baltimore, Md., and at Millers Island. As set forth in the inventory filed in the Orphans Court of Baltimore City, copy of which is attached	570.00
	Total (also enter under the Recapitulation, Schedule O)	$60,769.12

Schedule G

Transfers During Decedent's Life

(1) Did the decedent make any transfer described in the first paragraph (including the six subparagraphs) of the instructions on the reverse of the preceding sheet? No. (Answer "Yes" or "No.").

(2) Did the decedent, within 2 years immediately preceding his death, make any transfer of a material part of his property without an adequate and full consideration in money or money's worth? No. (Answer "Yes" or "No.")

(3) Did the decedent, at any time, make a transfer of an amount ~~of $5,000 or~~ more without an adequate and full consideration in money or money's worth, but not believed to be includable in the gross estate as indicated in the first paragraph (including the six subparagraphs) of the instructions for this schedule? No. (Answer "Yes" or "No.")

(4) If the answer to question (3) is "Yes" state date, amount or value, character of transfer, and motive which actuated the decedent in making the transfer:

(5) Were there in existence at the time of the decedent's death any trusts created by him during his lifetime? No. (Answer "Yes" or "No.")

* * * * * * * * * * *

Total (also enter under the Recapitulation, Schedule O) None.

Schedule H

Powers of Appointment

(1) Did the decedent, at the time of death, possess a power of appointment created (*a*) after October 21, 1942? No, or (*b*) on or before such date? ..... (Answer "Yes" or "No.")

(2) Did the decedent, at any time, by will or otherwise, exercise or release (to any extent) a power of appointment created (*a*) after October 21, 1942? No, or (*b*) on or before such date? ..... (Answer "Yes" or "No.")

(3) Were there in existence at the time of the decedent's

death any trusts not created by him under which he possessed any power, beneficial interest, or trusteeship? No. (Answer "Yes" or "No.")

* * * * * * * * * * *

Total (also enter under the Recapitulation, Schedule O): None.

SCHEDULE I

PROPERTY PREVIOUSLY TAXED

* * * * * * * * * * *

None.

* * * * * * * * * * *

(*c*) Deduction for property previously taxed without proportionate reduction (item (*a*) minus item (*b*) (also enter under Schedules P and Q, or Schedule R): None.

DEDUCTIONS

SCHEDULE J

FUNERAL AND ADMINISTRATION EXPENSES

Item No.	*Description*	*Amount*
1	Executors' commissions—amount estimated/agreed upon/paid. (Strike out words not applicable)	
2	Attorneys' fees—amount estimated/agreed upon/paid. (Strike out words not applicable)	$2,500.00
	Funeral Expenses	
	W. J. Tekner & Sons	893.25

Miscellaneous Administration Expenses

Six Certificates of letters	$ 3.00	
John J. Burns and Francis J. Dailey—Appraisal	60.00	
Fidelity and Deposit Co.—Bond	60.00	
Baltimore National Bank—Safe Deposit Box	6.00	
Fidelity and Deposit Co.—Bond	60.00	
John J. Burns and Francis J. Dailey	50.00	
Register of Wills—Additional Inventory filing	8.00	
Estimated Tax on Executor's Commissions	746.24	
Baltimore National Bank—Safe Deposit Box	6.00	999.24
Total (also enter under the Recapitulation, Schedule O)		$4,392.49

Schedule K

Debts of Decedent

Item No.	*Creditor and nature of claim*	*Amount*
1	W. H. Lohmeyer—Clothes	$ 57.18
	Dr. Glenn Carter—Dentist	7.00
	Downes—Xmas Cards	25.71
	Emerson Hotel—Cafe Charge	3.70
	Warner & Co.—Clothes	40.80
	Dr. C. W. Wainwright—Hospital Service	150.00
	Hahn and Hahn—Flowers	40.80
	Dr. Wm. G. Speed—Physician	10.00
	N. Hess & Sons—Shoes	17.29
	C&P Tel. Co.—Sparrows Point Exchange	4.37

Cons. Gas Elec. Light & Power Co.—Service	5.49
Dr. J. N. Knig	30.00
C&P Tel. Co.—Service, 11/1-11/26/47	27.56
Dr. G. I. Brandon—Dentist	40.00
Union Memorial Hospital, 11/12-11/18/47	463.62
Harry H. Witzke—Ambulance	10.00
Con. Gas Elec. Light & Power Co., 10/30/47-12/1/47	6.22
Suburban Propane Gas Co, 9/26-11/21/47	5.05
Total (also enter under the Recapitulation, Schedule O)	$944.79

Schedule L

Mortgages and Liens

* * * * * * * * * * *

Total (also enter under the Recapitulation, Schedule O): None.

Schedule M

Support of Dependents and Net Losses

Support of Dependents

* * * * * * * * * * *

Total (also enter under the Recapitulation, Schedule O): None.

Net losses during administration

* * * * * * * * * * *

Total (also enter under the Recapitulation, Schedule O): None.

Schedule N

Charitable, Public, and Similar Gifts and Bequests

* * * * * * * * * * *

Total (also enter under the Recapitulation, Schedule O): None.

Schedule O

Recapitulation

Schedule	Gross estate	Value at date of death
A	Real estate	$130,200.00
B	Stocks and bonds	13,528.80
C	Mortgages, notes, and cash	53,491.27
D	Insurance	35,128.58
E	Jointly owned property	0
F	Other miscellaneous property	60,769.12
G	Transfers during decedent's life	0
H	Powers of appointment	0
I	Property previously taxed	0
	Total Gross Estate	$293,117.77

Schedule	Deductions	Amount	
J	Funeral and administration expenses	$ 4,392.49	
K	Debts of decedent	944.79	
L	Mortgages and liens	0	
M	Support of dependents	0	
	Item (*a*) Total of above deductions	$ 5,337.28	
	Item (b) Value of property subject to claims	257,989.21	
	Allowable amount of above deductions (item (*a*) or item (*b*), whichever is the smaller). (See note)		$5,337.28
M	Net losses during administration		0
N	Charitable, public, and similar gifts and bequests		0
	Total Allowable Deduction, except specific exemption and property previously taxed		$5,337.28

SCHEDULE P.

NET ESTATE FOR THE BASIC TAX—RESIDENT OR CITIZEN.

Instructions.—This schedule should be used only for the estate of a resident or citizen of the United States.

1. Total gross estate		$293,117.77
2. Total allowable deductions, except specific exemption and property previously taxed	$ 5,337.28	
3. Specific exemption	100,000.00	
4. Total deductions, except property previously taxed (item 2 plus item 3)	$105,337.28	
5. Deduction for property previously taxed without proportionate reduction (Schedule I, item (c))	0	
6. Proportionate reduction (see instructions for Schedule I as to computation, subparagraph (3), under "Limitations")	$ 0	
7. Net deduction for property previously taxed (item 5 minus item 6)	$ 0	
8. Total deductions (item 4 plus item 7)		105,337.28
9. Net estate (item 1 minus item 8)		$187,780.49

SCHEDULE Q.

NET ESTATE FOR THE ADDITIONAL TAX—RESIDENT OR CITIZEN.

Instructions.—This schedule should be used only for the estate of a resident or citizen of the United States.

1. Total gross estate		$293,117.77
2. Total allowable deductions, except specific exemption and property previously taxed	$ 5,337.28	
3. Specific exemption	60,000.00	
4. Total deductions, except property previously taxed (item 2 plus item 3)	$ 65,337.28	
5. Deduction for property previously taxed without proportionate reduction (Schedule I, item (c))	$ 0	
6. Proportionate reduction (see instructions for Schedule I as to computation, subparagraph (3) under "Limitations")	$ 0	
7. Net deduction for property previously taxed (item 5 minus item 6)	$ 0	
8. Total deductions (item 4 plus item 7)		65,337.28
9. Net estate (item 1 minus item 8)		$227,780.49

Computation of Tax

1. Gross basic tax (*Use column (1) of Table, Sheet XXII*)	$ 4,133.51	
2. Credit for State inheritance, etc., taxes (not to exceed 80% of item 1)	3,306.80	
3. Gross basic tax less credit for State inheritance, etc., taxes (item 1 minus item 2)		$ 826.71
4. Total gross taxes (basic and additional) (Tentative Tax) (*Use column (2) of Table, Sheet XXII*)	59,034.15	
5. Gross basic tax	4,133.51	
6. Gross additional tax (item 4 minus item 5)		54,900.64
7. Total gross taxes less credit for State inheritance, etc., taxes (item 3 plus item 6)		55,727.35
8. Credit for Federal gift taxes	$ 0	
9. Credit for foreign death duties (See note)	0	
10. Total credit for Federal gift taxes and foreign death duties (item 8 plus item 9)		0
11. Net estate tax payable (item 7 minus item 10)		$ 55,727.35

Affidavit of Person or Persons Filing Return

Howard F. Knipp
Executor
600 S. Pulaski St.

Sworn to and subscribed before me this 19th day of May, 1949.

E. Virginia Nolen
Notary Public

19

Howard F. Knipp

called as a witness on behalf of the Petitioner, having been first duly sworn, testified as follows:

The Clerk: Have a seat, sir, and state your name and address.

The Witness: Howard F. Knipp.

The Court: Your address.

The Witness: 204 Goodwood Gardens, Baltimore, Maryland.

Direct Examination

By Mr. Paul:

Q. During the year 1947, you were a member of the partnership of John C. Knipp & Sons? A. Yes, sir.

Q. When did you start working with that firm, or a predecessor of that firm? A. 1920.

Q. Will you—had you previously been in the Navy? A. Yes, sir.

Q. When was the firm with which you started working in 1920 founded? A. It was founded in 1868.

Q. What was the name of the firm at that time? A. John C. Knipp & Brother.

Q. When did you become a partner in the firm of John C. Knipp & Sons? A. About 1953—1923, rather—excuse me.

Q. What was the business of the partnership at the time you started working there? A. The main business of our partnership at that time was interior woodwork. And then we also outfitted ships and sold furniture, both retail and wholesale.

Q. Was the ship work during this period after 1920 a major part of the business? A. No, sir.

The Court: What do you mean by "the ship business"—do you mean the interior work of woodwork on a ship? Is that what——

The Witness: It is what is known as joiner work. That is the same as in this room—would be the walls and the ceiling and the furniture. When we say "interior woodwork" we mean this type of work. We didn't do it in this building, but we did such jobs as the Library of Congress, we just finished the White House, we did the work in the Senate and the House, we did work at the Riggs Bank, and Lever Brothers, New York—that sort of thing.

The Court: The paneling on this wall would be something that you would do?

The Witness: That is interior woodwork, yes, sir.

By Mr. Paul:

Q. The work that you described as joiner work is not entirely work with wood, is it? A. No, sir. It could be wood or steel.

Q. And will you describe a little more particularly how that work is done on ships? A. The ships are made and launched by the shipwards, and then the joiner contractor comes on the ship, and he first installs what we call bulkheading, or what in this room would be known as panel work. We install the bulkheading, and then we install the metal doors, and then the marinite ceilings, and then the metal furniture.

Q. In what kind of buildings did you do this work? A. Well, we have done this interior woodwork in a number of buildings, a number of them in Washington, New York, and Baltimore. We have done such jobs in Baltimore as the Baltimore National Bank, the Union Trust Company; we have completed the Riggs Bank in Washington. A year ago we finished the work at the White House. Two years ago we did the work in the Senate Chamber. We also did work in the Library of Congress. We did it in the Apex Building, and the Social Security Building.

The Court: The headquarters has always been in Baltimore, of the partnership?

The Witness: Yes, sir, in Baltimore.

Mr. Waring: If your Honor please, I don't want to interrupt, but we have at least five partnerships in existence up to the effective date of our partnership, namely, July 7, '43, and I don't want to get too much in the record as to what happened on prior partnerships. I want the man to talk about this partnership which was in effect from July the 7th, 1943 on and stopped with the year 1948, at the latest. As far as this——

The Court: Well, the only thing is, the Court is
23 interested in getting a sufficient background to know the nature and character of the business, so he can determine what——

The Witness: Your Honor——

The Court: Just a moment. I assume the stipulation of facts sets out these salient facts.

Mr. Paul: I am trying to avoid, if your Honor please, repeating the stipulation.

The Court: All right. That is what I am sure counsel will do.

The Witness: The work that I have mentioned has been done since 1940.

By Mr. Paul:

Q. Was your father a partner of John C. Knipp & Sons prior to 1933? A. Yes, sir.

Q. When did he die? A. He died December 13——

Q. What was your father's name? A. Charles—he died December 13, 1933.

Q. Who were the partners of the firm after the death of your father? A. My uncle, Frank Knipp, brother, John Knipp, and myself.

Q. Who was the next partner of the firm who
24 died after 1933? A. My uncle, Frank H. Knipp.

Q. And prior to Frank's death, which is stipulated to be November 21, 1947, did you and Frank have any disputes with your brother John? A. Yes, sir.

Q. Did your brother bring any proceedings against you with respect to that dispute? A. Yes, sir.

Q. And that consisted of a bill of complaint, which has been stipulated as Exhibit 5-E? A. Yes, sir.

Q. Attached to the stipulation. That suit was in the Circuit Court No. 2, Baltimore City; is that correct? A. Yes, sir.

Q. Was there any settlement of that suit? A. Yes, sir.

Q. And that is the settlement embodied in the agreement of settlement, which is Exhibit 6-E? A. Yes, sir.

Q. Of the stipulation of facts filed in the case, dated August 1, 1945; is that correct? A. In that suit it was determined that John had to go before arbitration, and then through arbitration; I think that came out of arbitration.

25 Q. I want to draw your attention to paragraph 3 of the agreement of August 1, 1945, in case you should need that in connection with some questions I am about to ask.

The Court: I think you might preface any facts you are going to ask about that are in the stipulation by saying, "It has been stipulated so-and-so," and then ask the question.

Mr. Paul: All right, if you prefer that.

The Court: Either way, but that is probably the best way.

Q. (Continuing) I will say, then, that the agreement of August 1 in the settlement of the dispute between you and Frank, on the one hand, and John on the other, is embodied in the stipulation as Exhibit 6-F. Now, I draw your attention to paragraph 3 of that stipulated exhibit, and ask you to refresh your recollection as to the contents of that. A. Yes, sir.

Q. As of August 1, 1945 did the firm of John C. Knipp & Sons have a contract for work at New Orleans at the Delta Shipbuilding Company? A. Yes, sir.

Q. As of that date, was there still work to be done on ships in New Orleans? A. Yes, sir.

26 Q. Do you know when you finished the work on those ships? A. The early part of January, 1948.

Q. 1948? A. Yes, sir.

Q. As of August, 1945, had the firm been fully paid for its work on those ships? A. No, sir.

Q. In New Orleans? A. No, sir.

Q. Were the contracts dealing with those ships subject to renegotiation? A. Yes, sir.

Q. Now, as of the same date, August 1, 1945, did John C. Knipp & Sons hold contracts for any work on ships

being built by the Southeastern Shipbuilding Company, in Savannah, Georgia? A. Yes, sir.

Q. How many uncompleted ships were covered by Savannah contracts at the date August 1, 1945? A. Fifteen.

Q. Had full payment been received for your work on those ships in Savannah in August 1945?

Mr. Waring: Just a minute. Now we are going too deep into these matters—let this man testify from his knowledge. He is one of the partners here and should have some knowledge, but I contend that the renegotiations themselves, the settlement with the United States Government which was entered into on these contracts relating to renegotiation, if any, and the books and records of the partnership are the best evidence as to whether or not these bills were paid, as to whether or not renegotiation was entered into, and the result of those renegotiations, rather than let this witness testify from memory.

The Court: I think that the fact that the books and records would contain the information would not preclude this witness, if he has the knowledge, to testify. I overrule the objection.

By Mr. Paul:

Q. Was this contract for work at Savannah subject to renegotiation? A. Yes, sir.

Q. On August 1, 1945, had the firm completed its work on all ships in Savannah? A. No, sir.

Q. What happened to the contract under which you were outfitting ships there at Savannah? A. Directly after the war we received a cancellation by wire from the Maritime Commission for the outfitting, cancelling the outfitting of ten of these ships. The balance of them were completed by us.

Q. Was that cancellation notice pursuant to the Contract Termination Act of 1944? A. Yes, sir.

Q. About when was the contract cancelled as to those

ten ships? A. It was several days after the war; approximately the 15th of August.

The Court: What year?

The Witness: 1945.

By Mr. Paul:

Q. Then that cancellation was shortly after the agreement of settlement with John? A. That is true, sir.

Q. Did you go ahead and complete the work on the ships as to which there was no cancellation? A. Yes, sir.

Q. Now, did you—did the firm, on August 1, 1945, have any contracts for joiner work on ships being built in Milwaukee? A. Yes, sir.

Q. How many ships covered by the Milwaukee contract were uncompleted on August 1, 1945? A. There was one or two.

Q. When was that work-was that work completed? A. Yes, sir.

Q. About When? A. About December the 1st, 1945.

Q. And was that contract, that Milwaukee contract subject to renegotiation? A. Yes, sir.

Q. Now, speaking of all these contracts for ships being outfitted at Savannah and New Orleans and Milwaukee, with whom were those contracts made by John C. Knipp & Sons? A. They were made with the U. S. Maritime Commission.

Q. Did you have the——

Mr. Waring: Just a minute. I want to object to the form of the last question.

Will you read the last question, please?

(Last question read.)

Mr. Paul: It is pretty late, isn't it?

Mr. Waring: No, it is not. I object to the phrase "by John C. Knipp & Sons." I want to know whether those contracts were made in the name of John C. Knipp & Sons

or whether they were made in another organization known as John C. Knipp Aviation Corporation.

The Court: Well, I think the questions cover that. I will overrule the objection.

Has the question been answered?

The Witness: Yes, sir.

The Court: All right. Let the answer stand.

By Mr. Paul:

Q. Did you have prime contracts? A. Yes, sir.

Q. As time went on, was the original contract in these instances added to in any way? A. Yes, sir.

Q. What was the procedure in that respect? A. Well, as additional ships of the same type were built in the same yard, addendums would be added to the original prime contract.

Q. How did you receive payments under these contracts? A. We received progress payments, monthly, for materials delivered the previous month to the shipyard and labor spent thereon.

Q. You have stated that these contracts were subject to renegotiation. Were they, in fact, renegotiated? A. Yes, sir.

Q. What was the usual process of renegotiation, and when did it take place? A. The contracts were renegotiated the year following. For instance, 1944 work would be renegotiated in 1945.

Q. That was approximately a year after——

31 A. Yes.

Q. —the work was done under the contract? A. Yes, sir.

Q. Now, you have testified that there was a cancellation with respect to ten ships at Savannah. Did you, then, did the firm then, after that cancellation, enter into any negotiations with the Maritime Commission with respect to the Commission's liability under the contract upon its cancellation? A. Yes, we did, sir.

Q. Did you ever come to any agreement with the representatives of the Maritime Commission concerning your termination claim? A. Yes, sir.

Q. Was this agreement ever reduced to writing? A. Yes, sir.

Mr. Paul: Will you mark this for identification.

(Petitioner's Exhibit No. 28 marked for identification).

By Mr. Paul:

Q. I show you Petitioner's Exhibit 28 for identification, and ask you to identify that document. A. Yes, sir.

Q. What is the document? A. That is the final
32 settlement agreement we had on cancellation with the Maritime Commission on the ten ships which were cancelled at Savannah, Georgia.

Mr. Paul: I offer in evidence Petitioner's Exhibit No. 28 for identification.

The Court: Any objection?

Mr. Waring: Yes, I do object, sir. This goes beyond the taxable period that we have here in question. I objected as to the form of some of the questions that were being asked, and your Honor overruled me. The basis for my objection here—we had from 1931 on to 1943—there were several partnerships in existence. Some of these contracts were entered into by former partnerships, and continued on. Now, this agreement is signed by John C. Knipp & Sons, Howard F. Knipp as partner and as Executor of the Estate of Frank H. Knipp, Deceased.

The Court: What is the date of the document?

Mr. Waring: The date of this document is the 6th day of April 1951—is when it was sworn to.

Mr. Paul: It is dated March 1951, I think, at the beginning, and sworn to as you said, on April 6, 1951.

Mr. Waring: It is beyond the period that we have in interest here, at the time when I contend, or the respondent contends that Mr. Howard Knipp was operating as a sole proprietorship, and I don't see that it has any bearing at

all on whether or not John C. Knipp received anything under the agreement of August the 1st, 1945. I don't see any materiality to it at all.

Mr. Paul: May I say—

The Court: Go ahead.

Mr. Paul: This document is offered for the purpose of showing that even as late as 1951, quite a long period after the death of Frank, John C. Knipp & Sons was still winding up its affairs, and this being a very serious piece of business, a piece of business which resulted under this contract in the commitment to pay $81,000 to the Maritime Commission. The very point of this case is that a partnership takes a certain amount of time to wind up its affairs.

The Court: Well, that will depend on the Court's attitude after it passes on these other questions, and the effect, therefore, will be considered. The document, I think, is admissible, and the effect is a question the Court will later have to determine. It will be received in evidence as Petitioner's Exhibit 28.

(Petitioner's Exhibit No. 28 received in evidence.)

Mr. Paul: I would like to interject here by asking the Court's permission, with respect to this and subsequent original documents, to substitute photostatic copies.

The Court: That permission will be granted to petitioner, and also to respondent, with reference to any exhibits he may offer.

Mr. Paul: Will you mark this for identification, please.

(Petitioner's Exhibit No. 29 marked for identification.)

By Mr. Paul:

Q. I show you Petitioner's Exhibit 29 for identification, and ask you to tell the Court what that document is? A. This is a letter that was sent to us on March the 12th from the Maritime Commission, the subject being the final settlement agreement of the contract in question.

Q. And that is the contract as to which you have just testified and which was—— A. Yes, sir.

Q. ——just admitted into evidence? A. Yes, sir.

Q. That contract was sent to you with that accompanying letter; is that correct? A. Yes, sir.

Q. Did your negotiations with respect to your contract settlement end in April, March or April, 1951? A. No, sir.

Q. What happened after that? A. Some weeks later, we were notified by the Justice Department that they
35 wanted to investigate that cancellation which had been settled, we thought had been settled by the Department of Commerce—by the United States Maritime Commission.

Q. And did the Department of Justice make any investigation? A. Yes, sir, they did.

Q. How long did that investigation last? A. Six to seven months.

Mr. Paul: Please mark this document for identification.

(Petitioner's Exhibit No. 30 marked for identification.)

By Mr. Paul:

Q. I show you Petitioner's Exhibit No. 30 for identification, and ask you to identify that document. A. Yes, sir.

Q. Will you tell the Court what it is? A. This is a letter dated October the 1st, 1951 from the Department of Justice, signed by Mr. James R. Browning, Acting Assistant Attorney General, in which letter he says that the findings as determined by the Department of Justice are the same as the findings determined by the Maritime Commission Cancellation Department.

Q. Did you have any further controversy with respect to this cancellation after the approximate date of
36 this letter? A. No, sir.

Mr. Paul: I offer in evidence Petitioner's Exhibit No. 30 for identification.

Mr. Waring: Do I understand that you are offering Exhibit 29, too?

Mr. Paul: Didn't I offer that?

The Clerk: No, sir.

Mr. Paul: I offer jointly, Exhibits 29 and 30. Mr. Waring has kindly called my attention to the fact that I did not offer 29; so I offer both these documents.

The Court: You offer now in evidence Exhibits 29 and 30, formally in evidence?

Mr. Paul: Yes, sir.

The Court: Is there any objection?

Mr. Waring: And I am objecting to—first, I want to ask Mr. Paul to state definitely the purpose for which they are being offered.

Mr. Paul: Does the Court care to hear the purpose of the offer?

The Court: Yes; you might particularize.

Mr. Paul: I offer both these exhibits, and the previous exhibit which has been admitted into evidence—they are offered for the purpose of showing your Honor that this partnership was active many years after the death
37 of Frank Knipp, and for the purpose of winding up its affairs, it had a claim against the Maritime Commission, a cancellation claim, and the Maritime Commission also had claims which are reflected in these letters, and there ensued, during a period of years after Frank's death, there was a long negotiation conducted by the Maritime Commission and the Department of Justice which was not settled until October 1951. Now, therefore, for the full period between November 1947 and October 1951, a period of almost four years, this partnership had to be engaged necessarily in the process of winding up its affairs. And the cases I mentioned in my opening statement indicate that the partnership has continued its existence for that purpose. That is the very point of this whole case.

The Court: Does respondent's counsel care to make any reply?

Mr. Waring: Yes, I certainly do. I say first, that it is not competent, neither of the three documents, Exhibits 28, 29, or 30 is competent for the purpose of showing that

the partnership as such, continued in existence after the date of death, namely, November 21, 1947, the date of the death of Frank. This business was carried on by the surviving partner as a sole proprietorship namely, Howard, who is a witness in this case and is on the stand at this time.

38 Whether or not Howard, as an individual or as a surviving partner, continued to enter into negotiations with the United States Government relative to contracts which were in existence prior to the death of Frank has nothing to do with the issue involved in this proceeding, and I don't think they are competent for establishing the point for which Mr. Paul has offered them, and therefore, I object to them.

Mr. Paul: Before your Honor rules, I would like to make another point about their relevance. My opponent, representing the Treasury, is contending that there was no partnership in existence. These various documents are offered for the purpose, as I indicated previously, and also, for the purpose of showing that the Maritime Commission and the Department of Justice thought, as late as 1951, that there was a partnership in existence, because all of them, the letters, the two letters are addressed to John C. Knipp & Sons, which is the name of the partnership, and Exhibit 28 contains the signature of both Howard and *John Knipp as partners* of the firm. In other words, we have here two departments of the government treating with a partnership here on the very face of the papers. Now we have another department of the government saying there was no partnership.

Mr. Waring: I object to the characterization "United States Government treating John C. Knipp & Sons

39 as a partnership and as in existence in 1951."

The Court: Well, the effect of the testimony, the weight to be given it is a matter to be determined. But I think the documents are clearly admissable, and they are admitted as Exhibits 29 and 30.

(Petitioner's Exhibits Nos. 29 and 30 received in evidence.)

The Court: Are there further questions on direct examination?

Mr. Paul: Yes, I have some more, your Honor.

By Mr. Paul:

Q. How did the firm of John C. Knipp & Sons account for the income received by it from the contracts with the Maritime Commission; I mean, for income tax purposes, how did it account for it? A. On the fiscal year basis in accordance with the billings and progress payments made.

Q. I take it that the firm took payments received in income each year as the payments were received; is that correct? A. That is true.

Q. The date, at the date of your uncle's death November 21, 1947, had there been a settlement of the contract termination claim under the Savannah contracts? A. No, sir.

Q. As the same date, that is, the date of your uncle's death, were there in existence contracts which were subject to profit refunds under the Vinson Law? A. Yes, sir.

Q. Was the work on these contracts completed during the fiscal year ended January 31, 1947? A. Some of it, yes, sir.

Q. Subsequent to your uncle's death, was the firm required to make repayment of any amounts received under these contracts to the Maritime Commission? A. Yes, sir.

Q. When was the amount to be repaid ultimately determined? A. You mean the ones that were refunded due to the Vinson Act?

Q. Yes—no, I beg your pardon, Mr. Knipp, I mean—well, yes, first answer as to the Vinson Act. Were there any payments required to be—repayments to the Maritime Commission required to be made under the Vinson Act? A. Yes, sir.

Q. And when was the amount to be repaid ultimately determined? A. In either 1949 or 1950; I am not sure.

Q. Did you have, in October of 1947, or did the
41 firm have on that date, October 30, 1947, any claim made against it on account of alleged overpayments made by the Maritime Commission? A. Yes, sir.

Mr. Paul: Please mark this document for identification.

(Petitioner's Exhibit No. 31 marked for identification.)

By Mr. Paul:

Q. I show you Petitioner's Exhibit 31 for identification, and ask you to describe that document. A. That is a letter received by us from the United States Maritime Commission dated October the 30th, 1947, in which they advised us that through an error we had been paid $322,461 for material which we had applied for on cancelled ships. It was an error on our part, and it was an error on the part of the U. S. Maritime Commission.

Q. How did the error arise? A. The error arose because of the fact that the clerk, in billing, making the progress bills out, had not taken into account the fact that these nine vessels had been cancelled and had been making progress as the materials were delivered to the yard.

Q. Did the partnership of John C. Knipp & Sons assert a counterclaim on account of that claim by the
42 government? A. Yes, sir.

Q. What was the nature of the counterclaim? A. We asserted a counterclaim for extras for time and material that we had done on approximately the 200 Liberty ships we had outfitted and for which we had never made any charge.

Mr. Paul: Please mark this document for identification.

(Petitioner's Exhibit No. 32 marked for identification.)

By Mr. Paul:

Q. Now I show you Petitioner's Exhibit No. 32 for identification, and ask you to identify that document. Tell us what that document is. A. That is a letter dated

November 26 from the United States Maritime Commission, in which they asked for immediate payment of $322,461.

The Court: What is the year? You said November 26.

The Witness: That is 1947—sorry—1947—in which they asked for immediate payment of that money. They also say there are offsetting charges due to changes and extras and overtime, which we had stated.

Mr. Paul: Please mark this document for identification.

43 (Petitioner's Exhibit No. 33 marked for identification.)

By Mr. Paul:

Q. Now, will you identify Petitioner's Exhibit No. 33 for identification, which I now show you? A. That is a letter from the United States Maritime Commission dated February the 21st, 1949, making reference to this amount of $322,461. In the same letter they advise us that they are processing a number of our current billings of $177,733, and are deducting that amount of money from the amount which they claim is due them.

Q. When did the firm receive these erroneous payments? A. Some time during 1946.

Q. Was it prior to January 31, 1947? A. Yes, sir.

Q. Had these payments been included in the taxable income? A. Yes, sir.

Q. Had taxes been paid on them? A. Yes, sir.

Q. Did the fact that taxes had been paid create any difficulty about making prompt return to the Maritime Commission? A. Yes, sir.

Q. About what rate of tax was paid on these payments? A. Between 90 and 94 per cent.

44 Q. Was this $322,461 claimed by the Maritime Commission finally paid? A. Yes, sir.

Q. How was it paid? A. By checks from John C. Knipp & Sons.

Q. Was there any——

Mr. Waring: Just a minute.

Mr. Paul: I haven't offered them.

Mr. Waring: I know, but he said John C. Knipp & Sons. That is objected to, sir. I don't know whether they are doing it on purpose to try to confuse this record.

The Court: The Court understands that is what the witness believes and that is what they contend, and because they so state and so believe doesn't influence the Court. The Court determines on evidence.

Mr. Waring: The respondent claims there was no such concern known as John C. Knipp & Sons.

The Court: That is what the lawsuit is about. The Court so understands. Neither side is precluded from basing its questions on what it believes to be the facts.

By Mr. Paul:

Q. Was any part of this $322,000-odd paid by credit through billings? A. Yes, sir.

Q. Now, will you look at this exhibit again and tell me how much——

The Court: Which one is that?

Mr. Paul: Exhibit No. 33 for identification. It hasn't been offered in evidence.

The Court: I understand Exhibits 32 and 33 have not been offered as yet.

Mr. Paul: I think also 31, your Honor.

By Mr. Paul:

Q. Will you tell us how much was paid by check and how much was paid by credit through billings? A. $177,733.05 was paid by billings, which were billings that, as shown on our statement of John C. Knipp & Sons from March of 1947 till March the 30th of 1948. In other words, credit was given in our billings in 1948 against the amount which was due the Maritime Commission.

Mr. Paul: I now offer in evidence Petitioner's Exhibits 31, 32, and 33 for identification.

Mr. Waring: And they are objected to by the respondent as not being competent to establish the purpose for which they are being offered, namely, to show that there was in existence after November 21, 1947 any concern known as John C. Knipp & Sons, a partnership.

The Court: The Court, without making any commitment as to the effect to be given to them, admits them in evidence, and they will be formally received in
46 evidence and marked as indicated.

(Petitioner's Exhibits Nos. 31, 32, and 33 received in evidence.)

Mr. Paul: Please mark these documents for identification.

(Petitioner's Exhibit No. 34 marked for identification.)

By Mr. Paul:

Q. I show you now Petitioner's Exhibit No. 34 for identification and ask you to tell us what those documents are? A. These are the checks which represented the payment due the Maritime Commission after they had taken credit of $177,000.

Q. Those are the checks representing that balance—$144,000? A. Yes, sir.

Q. Those checks indicate that John C. Knipp & Sons had a bank account through February 6, 1950 with the Baltimore National Bank, Baltimore, Maryland——

Mr. Waring: That is objected to——

Mr. Paul: Wait a minute, let me ask the question first.

Mr. Waring: I thought you had finished.

Q. (continuing) Does the firm still have this bank
47 account?

Mr. Waring: Just a minute. The bank account—the retained statements are the best evidence, and not any statement of this gentleman on this stand, and respondent contends that after February 1, 1948 there never was any concern known as John C. Knipp & Sons.

The Court: The Court understands that is what we are litigating about——

Mr. Waring: No, wait a minute—this is the first time it has been brought in. On that day the corporation was formed, and I think that they ought to produce the bank statements themselves, and not give testimony from this gentleman on that.

The Court: Well, the fact that there may have been bank statements will not preclude the admission—I mean, statement by the witness that they had a bank account. The objection is overruled.

Mr. Waring: But he is characterizing the account as being the account of a partnership.

The Court: I understand that is what he contends all the way through, and respondent contends otherwise, but the Court, in admitting evidence from either party, is not deciding on the weight to be given it at this time.

Mr. Waring: I agree, sir, but they are characterizing this as different from what it appears to be.

48 The Court: Well, you can bring that out on your cross examination.

Mr. Paul: I was reading the name of the signer of the check, which is John C. Knipp & Sons, the partnership.

The Court: How many of those checks are there? I don't believe it has been stated.

Mr. Paul: There are six checks. I now offer them in evidence. To be specific and keep the record clear, I offer in evidence Petitioner's Exhibit 34 for identification.

The Court: The checks are offered as one exhibit?

Mr. Paul: Consisting of six checks—as one exhibit.

The Court: Yes.

Mr. Waring: I have no objection to these originals going in, sir, for the limited purpose for which I understand they are being offered, that is, to show there was in effect a bank account. But I request specifically that the original Check No. 3755, which is part of Exhibit No. 34, that the original be left with the Court because the photostat that I have does not show the cancellation of the name of John C. Knipp & Company, Inc. as used on that check and the substitution of the name of John C. Knipp & Sons.

Mr. Paul: That is not the only purpose of offering these checks. I must be explicit about that. They are offered for the purpose of showing that the firm
49 was still doing business the date of the payment of these checks, as well as the limited purpose stated by Mr. Waring.

The Court: Well, the checks will be admitted as one exhibit, namely, Petitioner's Exhibit No. 34, six checks, I believe.

The Clerk: Yes, your Honor.

(Petitioner's Exhibit No. 34 received in evidence.)

Mr. Waring: I also ask that the originals be left with the Court.

Mr. Paul: We will leave all the originals.

Mr. Waring: I want the record to show specifically that the original check No. 3755 is to remain with the Court, and not have a photostat substituted because of what I contend is a fact does not show on the photostat.

The Court: All right.

We will take a ten-minute recess.

(A short recess was taken at this point.)

The Court: You may proceed.

By Mr. Paul:

Q. Mr. Knipp, you testified that as of August 1, 1945, the date of the settlement agreement with John, your Brother, John C. Knipp & Company had certain unfinished business, consisting of unfinished work on outfitting
50 ships under contract at Savannah and New Orleans. Do you know of any method of valuing your brother's interest as of that date? A. No, sir.

Q. Have you—or had you made any settlement with John under the contract of August 1, 1945 at the date of Frank's death. A. No, sir.

Q. Have you made any settlement with John to this very date? A. No, sir.

Q. Now, as of November 21, 1947, the date of your uncle's death, you testified that there was an unsettled

claim with respect to the contract for outfitting ships at Savannah. A. Yes, sir.

Q. And I believe there was also an unsettled termination claim at that date? A. Yes, sir.

Q. Was there any way, or do you know of any way of evaluating your uncle's interest in the unsettled claim as of the date of his death? A. No, sir.

Q. Did the determination of your uncle's interest in the firm await the outcome of the contract termination claim? A. Yes, sir.

Q. As of the date of your uncle's death, was your uncle's interest subject to any other adjustment by reason of events subsequent to his death? A. Yes, sir.

Q. What events? A. It was subject to any adjustments either for profit or for loss on the previous year's, fiscal year's business, that is, the contract which had been completed during that fiscal year.

Q. Was it subject to any adjustments under the Vinson Act? A. Yes, sir.

Q. Would there be any other adjustments to the decedent, Frank's interest, such as adjustments resulting from the replacement of defective work subsequent to the date of death? A. Yes, sir.

The Court: Would counsel put in the record what is meant by the Vinson Act—or does that appear in the stipulation of facts?

Mr. Paul: Well, I should assume the Court could take judicial notice—I will put it in—

By Mr. Paul:

Q. What kind of adjustments were made under these contracts under the Vinson Act? A. Adjustments were made—the Vinson Act allowed us ten per cent profit, so adjustments were made in contracts that had more than a ten per cent profit, even though these jobs had been contracted for on an—on a fixed contract basis.

Q. Now, did the partnership agreement between you and John and Frank dated July 7, 1943—previous to that date did you and John and Frank have any conversations as to the procedure to be used for determining the interest of the deceased partner under the agreement of July 7, 1943? A. Yes, sir.

Q. When were these conversations——

Mr. Waring: If your Honor please, that would be strictly self-serving on behalf of this witness. He is a party in interest here. The partnership agreement is in writing, and I object to him testifying with respect to any oral understanding that they might have had in existence between the members of the partnership. In other words, there was a suit brought by one of the partners under the specific contract that we have in evidence in this case, namely, the partnership agreement as of 1943.

Mr. Paul: May I reply to the objection, your Honor?

The Court: Yes, you may.

Mr. Paul: The respondent is invoking the parol evidence rule. This Court knows that that rule is applicable only in disputes between the parties, and even there, with considerable limitations. It is only an unambiguous contract as to which parol evidence may not be admissible, and that, in a dispute between the parties. I offer this line of testimony for the purpose of acquainting the Court fully with the circumstances agreed upon between the parties, not only in the written agreement itself, but in conversations prior to the agreement and in practice after the agreement for determining Frank's interest as of the date of death.

The Court: Well, the Court thinks there is some doubt about whether or not the evidence is admissable; but he is going to tentatively admit it with the understanding that counsel, in their briefs, can present the matter, and the Court can then definitely tell whether or not it will be considered as evidence. With that understanding, with that limitation, why, the objection is overruled, and the witness may answer the question.

Mr. Paul: You said there were conversations——

The Court: He asked about what the conversation was, I believe was the last question.

Mr. Paul: I wanted to ask him:

By Mr. Paul:

Q. How many conversations were there pertaining to this subject previous to July 7, 1943? A. There were several.

54 Q. And who was present at the conversations? A. At some of them there were Frank Knipp, John Knipp and myself; at others there were our attorney, Mr. Harry Karr, Frank Knipp, John Knipp, and myself.

Q. Now, will you tell us the substance of these conversations? A. The substance of the conversations was that each individual item was examined, and it was put in our contract of July the 7th, 1943 in accordance with what had been determined between the partners.

The Court: These are conversations, then, prior to the execution of the contract?

The Witness: Yes, sir.

By Mr. Paul:

Q. Was anything said in these conversations with reference to the adjustments of the capital accounts of the respective partners? A. Yes, sir.

Q. What was said in that respect? A. It was said that in a deceased partner, his capital account would be judged by the amount at his credit as of the preceding closing of the fiscal year, subject to any adjustments up or down on the work which had previously been done and which had been credited to his capital account.

The Court: Is respondent objecting to all of this evidence?

Mr. Waring: I certainly am.

The Court: It is admitted subject to the limitation mentioned previously.

The Witness: For any claims of the government for taxes, replacements, or refunds.

By Mr. Paul:

Q. After John's withdrawal from active participation of the firm on August 1, 1945, did you and Frank make any arrangements as to the splitting of profits from that date on? A. We said that the profits would be split in the same proportion as what—as he and I previously, or had under our arrangement of July the 3rd, '43.

Q. July the 3rd, '43? A. July the 7th, '43. And we operated under the same partnership agreement.

Mr. Waring: For what period are you talking about, sir.

The Witness: As a continuing partnership.

Mr. Waring: After February 7, '43?.

The Witness: After February the 1st? I didn't get your dates.

Mr. Waring: The partnership agreement we have here is dated February 7, 1943.

56 The Witness: That's right.

Mr. Waring: And I want to know what you were talking about when you said you had an agreement continuing, this oral understanding; what were you talking about?

The Witness: In accordance with our agreement of July the 7th, 1943; our agreement called for a continuing partnership. We continued on the same basis.

By Mr. Paul:

Q. Now, did you split profits after John's withdrawal August 1, 1945?

Mr. Waring: Objected to—just a minute—now, that has all been stipulated to. We have the withdrawal account of John, we have the withdrawal account of Howard, we have the withdrawal account of Frank, and those accounts speak for themselves as to how it was done, what they each one received.

The Court: I overrule the objection. Answer the question.

Mr. Paul: Go ahead, answer, Mr. Knipp.

The Witness: Do you mind repeating the question?

Mr. Paul: Will you read the question to the witness, please.

(Pending question read.)

The Witness: After John's withdrawal from active participation in the partnership as of August the
57 1st, he still retained 20 per cent interest in the old contracts in force before he ceased in active participation of partnership. Therefore, after he left from active participation there were 80 parts, so Frank Knipp and I each took 40 parts of 80 parts, or 50 per cent each.

The Court: What was done with the other part?

The Witness: Just——

The Court: Was it just left in the business?

The Witness: After he withdrew, on the new contracts there were only 80 parts, so we took each 40 parts of the 80 parts.

By Mr. Paul:

Q. On November 21, 1947, when your uncle died, did the firm have any unfinished outstanding contracts? A. Yes, sir.

Q. What was done about those contracts? A. We committed, I mean, we continued those contracts in the operating company—I mean, operating partnership of John C. Knipp & Sons until January the 31st, 1948.

Q. What happened with respect to the business of the partnership on February 1, 1948? A. On February the 1st, 1948, Knipp & Company was formed, an incorporated company.

Q. Under what law—never mind; that is stipulated.

What was done with respect to the building and
58 machinery of the partnership? A. The building and machinery of the partnership remained in the

name of the partnership, John C. Knipp & Sons, and in turn, the partnership of John C. Knipp & Sons leased the machinery and building to the incorporated company.

Q. What was done with respect to the inventory of the partnership? A. Knipp & Company purchased the inventory from the partnership of John C. Knipp & Sons for cash.

Q. Did the new corporation carry on the business and complete the pending contracts? A. Yes, sir.

Q. I think you said the corporation paid in cash for the inventory taken over by it? A. Yes, sir.

Q. Is the corporation, Knipp & Company, still in existence? A. Yes, sir.

Q. For your conveniece in answering the next few questions I will place before you stipulated Exhibit 10-J, which is Frank Knipp's will. That will contains provisions for specific legacies totaling $137,000. Were all those legacies named in the will in effect at the
59 time of Frank's death? A. Yes.

Q. Were all the specific legacies paid? A. They were all paid in cash with the exception of the one to me.

Q. The one to you is the one contained in the codicil, is it not? A. Yes, sir.

Q. What funds were used to pay those legacies? A. Some funds out of the estate and some funds from John C. Knipp & Sons.

Q. At the time of the death, how much did your uncle Frank owe the federal government for income taxes?

Mr. Waring: I object to the question. I want to know, what is the purpose of it?

Mr. Paul: Mr. Waring is making the point that this will named Mr. Howard Knipp as residuary legatee. I think it is therefore relevant to show in detail what happened to the estate. Sums owing by the decedent to the federal government would be debts of the estate. I am trying to enlighten the Court with respect to the distribution of this estate.

The Court: I overrule the objection.

Mr. Waring: Just a minute, please, sir.

The Court: All right.

Mr. Waring: All right, it has been stipulated
60 as Exhibit 11-K, which is the inventory of this estate showing all the income coming into the estate and all expenses going out of the estate, and that exhibit speaks for itself, and this witness should not be permitted to speak as to what happened to the funds of this estate. This account is a matter of probate.

The Court: Unless the answer contradicts the stipulation of facts, why, I see no objection to its admissibility. I will overrule the objection.

Mr. Paul: Which exhibit is that, Mr. Waring?

For your information, your Honor, I would like to say that the stipulation simply attaches a copy of the accounting filed. There is nothing said in the stipulation about whether all the asssets of the estate, all the assets passed through the estate and about whether all of the debts of the decedent were paid by the estate.

The Court: Well, this question, then, doesn't contemplate any contradiction——

Mr. Paul: It does not, your Honor.

The Court: All right. Let the witness go ahead and answer.

By Mr. Paul:

Q. Now, I think I was asking you how much your uncle owed the federal government in income taxes at
61 the time of his death. A. Approximately $115,000.

The Court: You mean that was owing by him as an individual prior to his death—not by the estate, but by the income tax?

The Witness: Personal tax, yes, sir. That is just the federal taxes. There were more for the state, state taxes, individual state taxes.

By Mr. Paul:

Q. When you say approximately $115,000, are you referring to the years 1947 and 1948? A. I was referring from, I thought, from 1943 on.

Q. 1943 on? In order to refresh your recollection, I show you stipulated Exhibit 7-G, and call your attention specifically to these items under January 15, 1948, March 15, 1948, and February 24, 1949. Will you look at those figures and tell us what amount of income taxes owing by Frank at the date of his death were paid by the firm and charged to his capital account? A. Under date of January 15, 1948, for the federal taxes for the fourth quarter of 1947; $68,000.

Under March the 15th, 1948, tax for 1947, $40,043.55.

Under February the 24th, 1949, $8881.70.

Q. The total of those figures is $117,925.23? A. That's correct.

62 Q. Is that the amount—— A. I am wrong, then, in stating it goes back to '43. It should go back to '47.

Q. Now, in addition, did Frank—strike that out.

Those taxes were paid by John C. Knipp & Sons and charged against Uncle Frank's capital interest; is that correct? A. Yes, sir.

Q. In addition, were any taxes of Frank owing, federal income taxes owing at the date of Frank's death paid by anyone else? A. Yes, sir.

Q. What, and for what year, if you can remember? A. I paid—I mean, I paid $24,000 with my own check for taxes due in either '43 and '44, or '45 and '46. I am not sure which years they were.

Q. Why was this last amount paid out of your own funds? A. Because there wasn't sufficient cash either in John C. Knipp & Sons account, which we still carried, or in the estate.

Q. Do you remember when you paid that amount? A. Sometime in May of this year—of last year.

Q. Would you have your recollection refreshed as to the date of that payment by looking at this check
63 (indicating)? A. Yes, sir.

Q. How can you tell—what is that check? A. That is a Baltimore National check of my own personal account dated August the 6th, 1953. I was wrong when I said in May.

Q. And the smaller sum which you testified you paid out of your personal funds on account of Frank was part of the total, including that check; is that correct? A. That is correct.

Q. Now, showing you stipulated Exhibit 7-G, which is the photostatic copy of your uncle's capital account, are you familiar with this account? A. Yes, sir.

Q. Can you point out to me any payments of your uncle's state tax liabilities showing up in that account? A. Yes, sir.

Q. Were these state tax liabilities of Frank Knipp owing at the date of his death paid by the firm? A. Yes, sir.

Q. On his behalf?

The Court: It is difficult to distinguish between "state" and "estate." Did you mean State of Maryland tax?

Mr. Paul: I meant "state"; it will become clear in a moment—state, that is like Maryland or Texas.

The Court: Yes—Maryland State taxes.

64 By Mr. Paul:

Q. Will you show us—will you specifically enumerate any items in that account reflecting payments of state taxes paid by the firm on behalf of your uncle? A. On May the 15th, 1948, State of Maryland for 1947, $1070.40.

On April the 13th, State of Alabama for 1947, $1112.93.

On April the 13th, State of New York for 1947, $108.

On December the 31st, 1948, Georgia State income tax for 1943, 1944, and 1945, deficiencies of $5982.68.

On December the 31st, Maryland State tax for 1946, $78.05.

On December the 31st, Alabama State income tax for 1946, $7.87.

On December the 31st, Georgia income tax for 1946, $698.40.

Q. Is that Georgia or Louisiana? A. I am sorry, it is Louisiana.

The Court: Is the year the same on all these items?

The Witness: December 31, 1948, yes, sir.

The Court: You didn't give the year.

The Witness: I am sorry—December the 31st, 1948—Maryland income tax, $49.10.

65 On December the 31st, 1948, New York income tax, 1947, $7.24.

On February the 8th, 1949, State of Louisiana, 1946, income tax, $69.84.

On February the 9th, 1949, State of Alabama, 1946, penalty and interest of $2.84.

By Mr. Paul:

Q. How were these various taxes you have just enumerated paid? A. They were paid with checks by John C. Knipp & Sons.

Q. Well, was any charge made against your uncle's capital account? A. Yes, sir.

Q. Now, do you know who paid, or how your uncle's federal estate tax was paid? You were executor of the estate? A. Yes, sir.

Q. Do you know the amount of that tax? If you don't remember it, to refresh your recollection——

The Court: Let him refresh his memory, and then he won't have to guess.

Q. —I will show you a copy of your uncle's federal estate tax return. A. The amount is $55,727.35.

Q. Do you know the approximate date of that
66 payment? A. It was paid in 1948.

Q. Look at that return again and see if you have got the right year. It is stipulated. A. 1949.

Q. The payment was made May 19, 1949. A. May 19, 1949.

Mr. Waring: That is correct, sir.

By Mr. Paul:

Q. Were there sufficient assets in the estate other than your uncle's interest in John C. Knipp & Sons with which to pay that federal estate tax? A. No, sir.

Mr. Waring: That is objected, sir. Now, the capital account is in evidence and the estate account filed with the Probate State Court is in evidence, and those two accounts show exactly what was paid out of each account.

The Court: Well, the Court will weigh all that. The witness is permitted to testify, and the objection is overruled. The answer will stand.

Mr. Waring: I want the record to show that my objection is based on the fact it calls for a conclusion of the witness.

The Court: I understand it might be in conflict with what the record shows.

Mr. Paul: Well, in view of the objection made by my opponent:

By Mr. Paul:

Q. I call your attention to the capital account which is before you, stipulated Exhibit 7-G, and ask you to look at an entry dated May 18, 1949, and tell me what that entry reflects? A. That entry reflects a payment made from the firm of John C. Knipp & Sons to the Estate of Frank H. Knipp, Deceased.

Q. And what is the amount of that? A. $50,000.

Q. How was the rest of the tax of $57,000-odd paid? A. By check.

Q. By whose check? A. I think, from the estate, a check from the estate. The $50,000 was added so that

the estate would have the money, sufficient money to pay it.

* * * * * * * * * * * *

69 The Court: Petitioner, I believe, has concluded his direct examination.

Mr. Paul: That is correct, your Honor.

Cross Examination:

By Mr. Waring:

Q. Mr. Knipp, I show you Exhibit 5-E attached to the stipulation, which is the bill of complaint filed in the case of John C. Knipp versus Frank and Howard Knipp in the Circuit Court No. 2, Baltimore City. Attached to that proceeding is a statement of assets and liabilities as signed by John E. O. Feller. I am asking you to refer to the capital accounts set forth therein, and ask you if they are correctly recorded as of January 31, '44 on the three partners named therein, if you know? A. I would say they were correct in accordance with the auditor's report, yes, sir.

Q. And also, in accordance with the books of John
70 C. Knipp & Company, if you know? A. I don't know that, sir.

Q. You wouldn't know? All right, I show you Exhibit 6-F attached to the stipulation of facts, which is a copy of a memorandum agreement of settlement of the partners of John C. Knipp & Sons. Does that agreement set forth your understanding of the settlement of the bill of complaint which is in evidence as Exhibit 5-E attached to the stipulation of facts? A. Yes, sir, this is the settlement agreement that—with John C. Knipp.

Q. All right; now, did John C. Knipp, after the date of this agreement, namely, August the 1st, 1945, participate in subsequent earnings of the partnership known as John C. Knipp & Sons? A. Yes, sir.

Q. All right. Explain to the Court how—I said "earn-

ings;" I didn't say anything about prior earnings, I said subsequent to August the 1st, '45. A. That is correct.

Q. All right, now, let's go. A. In accordance with that agreement, he is entitled to all of the earnings in the contracts as of the time that he withdrew from active participation in the partnership as of August the 1st, 1945.

He also is entitled to the difference between the
71 book value of the assets and the real value of the assets, which are the building and the machinery at 600 South Pulaski Street.

Q. Your last statement had nothing to do whatsoever with the earnings of the business of John C. Knipp & Sons subsequent to August the 1st, 1945, did it, sir? I am talking about earnings, now, earnings of the partnership, nothing else. A. Would you repeat that, sir.

Mr. Waring: Read the question to the witness, please.

(Pending question read.)

The Witness: He was entitled to the earnings on the contracts in, subsequent to August the 1st, 1945, which contracts were in force when he withdrew from active participation of the partnership, yes, sir.

Q. I show you—that being so, if it is so, I show you Exhibit 19-S, which is the partnership return of income filed by John C. Knipp & Sons for the taxable year ended January 31, 1947; and I ask you to refer to Schedule "i" on the back of that return and state for me the amount of earnings which were earned during that year which you reported were taxable or distributable to John C. Knipp? A. In accordance with that contract dated October the 1st——

Mr. Waring: I ask you to answer my question,
72 please.

The Court: Well, he has a right to preface his answer. Go ahead

Mr. Waring: All right, sir.

The Witness: In accordance with our contract of settlement dated August the 1st, 1945, John Knipp was—the

firm of John C. Knipp & Sons was to make settlement with John C. Knipp if and when they could. He was also, during this time, between—when he withdrew from active participation in the firm, he had been drawing on account, moneys, on account of this settlement if and when it is made.

Mr. Waring: I ask that his answer be stricken as not responsive to my question.

By Mr. Waring:

Q. Now, I am going to ask you again to refer to that Exhibit 19-S, Schedule "i", and ask you what John C. Knipp's distributive interest was in the fiscal year named therein as shown by that schedule. A. There is nothing shown on this schedule as accruing to him at that time, because of, as of that time no one could tell whether there was a profit or loss in the contracts which he was to receive benefit from.

Q. Isn't it a fact that you and your—was he 73, your uncle? Yes.

Q. Uncle John F. Knipp—— A: No, Frank.

Q. I mean, Frank H. Knipp reported the entire income from the partnership of John H. Knipp & Sons for the taxable year ended January 31, 1947? A. Correct.

Q. You wouldn't have reported that income if it hadn't belonged to you, would you? Answer the question, please. A. We reported the income, knowing all the time that there was a certain amount of money due John C. Knipp after the completion of these contracts, yes, sir.

Q. But you reported it as your taxable income? A. That is true.

Q. And Frank reported it as his taxable income? A. That is true.

Q. All right, now, I show you Exhibit 20-T, which is the partnership return of income filed by some organization known as Howard F. Knipp and Frank H. Knipp, Deceased, trading as John C. Knipp & Sons, and I ask

you to refer to Schedule "i" on that report and tell me whether or not John C. Knipp received any taxable income for that period, as shown by that return? A.
74 I think he—it is my opinion that he received a negative income in that return subject to—which was due to adjustments made by the Internal Revenue and our own accountant, for subsequent years dating back to 1943.

Q. Is it a fact that you, Howard F. Knipp, reported all the taxable income as shown by that return for that year as your income, and that Frank—let me finish this sentence—and that Frank reported the salary received by him up to the date of death?. A. That is true.

Q. All right. Now I show you a partnership return of income filed by—I mean, filed in the name of Frank H. Knipp, Deceased, and Howard H. Knipp trading as John C. Knipp & Sons, Exhibit 21-U, and ask you who reported all the income that was earned by that concern during that year? A. I reported, subject to adjustments which were made in my account, as well as Frank Knipp's and John C. Knipp's.

Q. The fact is you reported all the income earned by that organization during that year as taxable to you, didn't you, sir? A. Yes, sir, subject to adjustments.

Q. The answer is, you did, didn't you, sir? A. I have to state, I think it is subject to adjustments.

75 Mr. Waring: I ask that that be stricken. The document speaks for itself.

Mr. Paul: Your Honor——

The Court: I will overrule the objection.

Mr. Waring: All right. That is all right with me, sir.

By Mr. Waring:

Q. Now let's go back to John C. Knipp's capital and withdrawal account, which is Exhibit 9-"i" attached to the stipulation of facts. I ask you first, does this account reflect the true status, in your opinion, as to the income account and capital account of John C. Knipp as shown by

the books and records of John C. Knipp & Sons? A. Yes, sir.

Q. All right. Referring to the balance in the capital account of John C. Knipp as of January 31, 1947, what is the balance due as shown by that account, sir? That is January 31, 1947, I am sorry. A. According to this report, it shows that—$25,558.23.

Q. What did it show at the end of the year? A. The red figure, $14,669.47.

Q. Now, referring to Exhibit 9-"i", will you explain to the Court why he had overdrawn his capital account as shown by the books and records of John C. Knipp &
76 Sons, if you know? A. As I understand it, his account showed the black figure until adjustments were put into his account in 1948, which adjustments dated back to 1943; so that until 1948 his account showed a black figure.

Q. But after that his account showed that he was indebted to the business known as John C. Knipp & Sons, did it not, sir? A. It did to the extent of credit which he had in the capital account, but not in accordance with the agreement of August the 1st, 1945.

Q. All right. Now, what was the highest amount that he was indebted, if you know, by referring to that schedule in front of you, to the business known as John C. Knipp & Sons? A. I can't tell.

Q. Isn't it your contention that at the time of the settlement—strike that.

Has there been a settlement with John C. Knipp you, sir? A. No, sir.

Q. All right. Isn't it your contention at the present time that John C. Knipp is indebted to you for an amount in excess of $42,000? A. No, sir.

77 Q. You never told anybody that? A. Oh, yes—oh, I told John that.

Q. All right. A. I have told our office manager that; I have told Mr. Paul that.

Q. Now, according to the stipulation of facts, paragraph 9 thereof, a concern known as Knipp & Company, Incorporated was formed; is that correct, sir? A. Yes, sir.

Q. All right. Now, after that date, no business was conducted—when I say "business" I mean income—producing business, no income-producing business was conducted by any concern known as John C. Knipp & Sons Company, or by anyone known as Frank H. Knipp, Deceased, and Howard Knipp trading as John C. Knipp & Sons? A. Wouldn't you call a rental an income-producing——

Q. I don't know; I am asking you the question, sir. A. I would say there was income-producing—one of which was rental—leasing.

Q. Are you through, sir? A. Yes, sir.

Q. Did you file any returns reflecting income from a business known as John C. Knipp & Sons? A. Yes, sir.

78 Q. What was it filed as? A. John C. Knipp & Sons.

Q. And what income was reported on that return? A. Whatever income shows on the reports.

Q. And what was John C. Knipp & Sons for the year subsequent to January 31, 1949? A. Partnership.

Q. Composed of whom, sir? A. Myself, myself as the executor of the Estate of Frank H. Knipp, and my brother as limited partner in the interest that he had in the partnership.

Q. Which brother is that? A. John C. Knipp.

Q. In your testimony you stated you filed returns in the name of John C. Knipp and your brother—— A. No, John C. Knipp & Sons. We made no return for John C. Knipp.

Q. All right. But you did make a return for Frank H. Knipp, Deceased, and Howard F. Knipp; is that right? A. That is true.

Q. But those are the only returns that you made, aren't they? A. That is true.

Q. All right. And in those returns all the income was reported as taxable to you, was it not, sir? A. All that—yes, sir.

79 Q. You testified on direct testimony, and I am trying to quote you, sir, and if I am wrong I will apologize—"We"—quote that word "we"—"continued the contracts after November 21, 1947." Who was the "we" that you referred to? A. John C. Knipp & Sons.

Q. And who was John C. Knipp & Sons after November 21, '47? A. The estate of my uncle and myself.

Q. And who was the owner of the interest of your uncle in John C. Knipp & Sons after that date—if you can answer the question? A. That is anybody's guess, sir.

Q. Well, what is your guess, sir? A. What is my guess?

Q. Yes. A. I made a statement over in the Internal Revenue Department that possibly, with the claims that they had I might better, be better to give up any bequest I might have and take ten thousand dollars, because at that time I didn't know whether I was winning or losing.

Q. Isn't it a fact that you knew, you know right this minute that you were named as residuary legatee of your uncle's will? A. That is true.

80 Q. All right. Now I show you what purports to be part of the first administration account of Howard F. Knipp, executor of the last will and testament of Frank H. Knipp, which is Exhibit 11-K, and I ask you, sir, if you know, what the item of $60,199.12 is as shown by the front page of that exhibit? A. Well, it says here, "The list of the debts." I couldn't enumerate the debts, no, sir.

Q. You don't know what that account is at all? A. I can't tell you what that amount is, no, sir. I can't enumerate them. It says here, "List of debts."

Mr. Waring: In order to help the witness I will show him an analysis of the figure $60,199.12 as shown in Exhibit 12-K and ask him to read into the record these two items which are an analysis of that one figure, please.

The Witness: "Member of co-partnership trading as John

C. Knipp & Sons, interest of the deceased as established by the accountants for the partnership, $54,875.96. Member of the co-partnership trading as Knipp Aviation Industries, interest of the deceased as established by the accountants for the partnership, $5323.16, making a total of $60,199.12."

By Mr. Waring:

Q. So that the interest—that is the fair market value as of the date of death of Frank C. Knipp in the
81 assets of a co-partnership trading as John C. Knipp & Sons, isn't it, sir? A. Well, that is the amount on the capital account.

Q. That is the remaining amount on the capital account after taxes had been paid? A. That, I can't answer.

Mr. Waring: All right. I offer in evidence as Respondent's Exhibit—what?

The Clerk: BB.

Mr. Waring: —BB a photostat copy of an audit report signed by Charles H. Schneppe, Jr. & Company, dated May 11, 1949, and relating to the capital account of Frank H. Knipp, Deceased, as shown on the books and records of John C. Knipp & Sons.

The Court: Is there any objection?

Mr. Paul: No objection.

The Court: The document will be admitted as Respondent's Exhibit BB

(Respondent's Exhibit BB received in evidence.)

Mr. Waring: Exhibit BB, which is in evidence, sir, reflects the balance in the capital account of Frank H. Knipp, deceased, as shown by the books and records of John C. Knipp & Sons as of February 1, 1947, and shows the various adjustments for income tax purposes and other
82 purposes whereby it is reduced to a figure of $54,875.96. Now, will counsel for petitioner stipulate with me that that sum of $54,875.96 is the value, the fair market value of the interest of Frank C Knipp——

Mr. Paul: As of the date of death——

Mr. Stern: No, that is a figure which takes into account various debts paid by the partnership for Frank after his death. The value of his capital interest at the date of death was higher than $54,875.96.

Mr. Waring: But that is the figure as shown on the federal estate tax return.

Mr. Stern: As of January 31, 1949.

The Court: Reading from Exhibit—what number?

Mr. Waring: Exhibit Double B.

The Court: That is the auditor's report.

Mr. Waring: That is agreeable to respondent.

The Court: What is agreeable to respondent?

Mr. Waring: Read what Mr. Stern said.

(Statement read.)

Mr. Waring: But you will stipulate with me that the figure of $54,875.96 was the amount stated on the federal estate tax return?

Mr. Stern: That is correct.

By Mr. Waring:

Q. So the debts of Frank Knipp as of the date of
83 death, which were not paid by you, out of his capital account as appearing on the books and records of John C. Knipp & Sons, were paid by you out of the assets of Frank H. Knipp, Deceased, which went through his estate, as shown in Exhibit 11-L, is that correct, sir? A. Yes, sir, and by me personally.

Q. Why did you personally pay any of the debts of Frank C. Knipp, Deceased? A. Because there wasn't enough money, cash money in the firm of John C. Knipp & Sons nor was there enough cash money in his estate.

Q. But there was enough real estate in his estate to have liquidated those debts if it had become necessary to dispose of the real estate, was there not? A. That is true.

Q. All right. Was there an account carried after the date of the formation of the corporation known as Knipp

& Company, Inc. after February 1, 1948? A. That's correct.

Q. There was an account? A. There was.

Q. To what—what was deposited in that account—what source of income was deposited to that account, or what capital sums were deposited to that account? A. Cash which, for the stock in the company, for

84 purchase of stock in the company.

Q. You misunderstood my question, Mr. Knipp—I am not talking about the corporation, I am talking about—I asked you if there was a bank account carried in the name of John C. Knipp & Sons after February 1, 1948, the date of the formation of Knipp & Company, Inc.? A. Oh, yes.

Q. There was? A. Yes, sir.

Q. All right, now, I am going to ask you what I tried to get from you before—what income was deposited to that account, if any? A. Rental income.

Q. From what source? A. From Knipp & Company.

Q. From Knipp & Company? And what was the rental income from, from Knipp & Company? A. Rental income on the building at 600 Pulaski Street.

Q. Who was the owner of that building at 600——

Mr. Paul: Let the witness finish his answer.

Mr. Waring: Excuse me. I am sorry.

The Witness: The building at 600 South Pulaski Street and machinery.

By Mr. Waring:

85 Q. Who was the owner of that building and machinery? A. John C. Knipp & Sons.

Q. Who is John C. Knipp & Sons? We are talking about 1949, sir. Who is John C. Knipp & Sons? A. The Estate of Frank H. Knipp, Howard F. Knipp, and John C. Knipp, limited partner.

Q. Are there any records available that show that John C. Knipp is a limited partner? A. There is a record from the Maritime Commission stating that they insisted in 1951.

that John C. Knipp join in a settlement of a cancellation claim, as late as March or April in 1951.

Q. But that related solely to contracts entered into prior to August the 1st, 1945, did it not, sir? A. August—what date did you say, sir?

Q. August the 1st, 1945, the date that John was kicked out, or withdrew from the partnership known as John C. Knipp & Sons. A. Yes, sir——

Q. All right—— A. —however, there is——

Mr. Waring: I don't want you to volunteer, please. You may take the witness.

Mr. Paul: May we have a recess of about five minutes?

The Court: We will take a short recess.

86 (A short recess was taken at this point.)

The Court: Does counsel for petitioner have any further questions of this witness?

Mr. Paul: Yes, sir. With your permission, Mr. Stern will ask just two questions.

Redirect Examination

By Mr. Stern:

Q. I show you stipulated Exhibit 9-"i", which is the capital account of John C. Knipp & Sons. You testified on cross examination that the red figure of $14,669.17 was the balance in the account as of January 31, 1947. Is that the correct year when that balance was in the account as shown by the account itself? What is the date of the entry showing that $14,669.17? A. February 1, 1949—1948, rather.

Q. What does that account show was the balance in his account as of January 31, 1947? A. $25,558.23.

Q. Would that be a credit balance? A. No, sir—yes, that was a credit balance, that is true.

Q. You testified that in the estate tax return filed for the Estate of Frank H. Knipp there was an amount shown on that return of $54,875 for Frank's interest in

87 John C. Knipp & Sons. A. Yes.

Q. Did that amount of $54,875 take into account the payment of debts and other adjustments in Frank's account by the partnership of John C. Knipp & Sons after Frank's death? A. Not entirely.

Q. Was the $54,875 the amount due him at his death, or were there later adjustments made to his account which resulted in a figure of $54,875? A. There were later adjustments made which gave that amount of $54,875.

Q. Would you look at stipulated Exhibit 11-K, which is the first administration account of Howard F. Knipp as executor of the last will and testament of Frank H. Knipp, Deceased. A. Yes.

Q. Would you tell me what amount is shown in that accounting as the gross estate of Frank H. Knipp? A. $153,090.01.

Q. In addition, was there any real estate? A. Yes, sir.

Q. How much was the real estate—— A. $125,000.

Q. So there would be a total personal estate, including real estate, of $278,090.01? A. That is correct.

Q. Now, were any debts paid by you as executor for the estate? Is anything shown in that account? I think it shows up on page 6, a total there. A. Yes, there's $66,709.90.

Q. In addition to those payments, was anything paid for the Maryland inheritance tax? A. Yes, sir. There was approximately $15,000.

Q. Do you want to refresh your recollection by looking at this document to see whether it was $15,853.51 A. $15,853.51.

Q. So that the net estate, after deducting the payment of debts of $66,709.90 plus $15,853.51 from $278,090.01 would be about——

Mr. Waring: No, read from the exhibit, please.

Q. (continuing) On page 8 of Exhibit 11-K, what is shown on that as the estate accounted for? A. $153,990.01.

Q. That is made up of a figure of $226,497.73, less cash advanced of $73,407.72, is that right? A. That is correct.

Q. What were the amount of specific legacies shown by the will of your uncle; do you recall that figure? A. $137,000.

Q. Did that $137,000 figure have to be paid out of
89 this net estate shown in this accounting? A. Yes, sir.

Q. After you paid those legacies, was there sufficient in the estate to pay the debts which you have testified to, to the United States Government for federal taxes that you have previously testified amounted to about $141,000?

Mr. Waring: Just a minute—sufficient in the estate—you mean cash and real estate, or what do you mean by that question?

Mr. Stern: As shown by the estate—$54,875.96—.

Q. So am I correct in saying, then, you were forced to pay these additional debts out of John C. Knipp & Sons? A. That is correct.

Mr. Stern: That is all.

Recross Examination

By Mr. Waring:

Q. What did you mean by that last remark, that you were forced to pay it out of John C. Knipp & Sons? In other words, you had real estate which could have been sold to have liquidated these accounts if it had been necessary, without going into your own pocket, would you not, sir? A. The real estate sold for $300,000; as of right now, they have paid on that real estate $210,000, the greatest portion of which was used to pay the bequests and taxes.

90 Q. In other words, after paying the specific bequests and taxes and all debts of the estate, the estate was solvent, was it not, sir, if we include the net value of the capital account of Frank C. Knipp therein? A. I hope so.

Q. The answer is, it was, wasn't it? A. I hope so.

out selling this real estate, sir? A. I don't understand.

Q. Wait a minute—as shown by Exhibit 11-K—I assume you are the one that advanced that—when I ask the question, I assume that you were the one that advanced the $73,000? A. Yes, sir.

Q. When I asked the question, now, why did you waive it without selling the real estate? A. Because I borrowed on the real estate; the real estate in question was sold for $300,000.

Q. Not at that time, sir? A. Sir?

Q. Not at that time? A. No, sir. At that time I didn't know whether I was going to get $200,000 for it.

Q. At that time you didn't want to sell the real
91 estate? A. Why not?

Q. I am asking you, sir. A. At that time there was—the real estate was for sale.

Q. But you didn't sell it, did you? A. No, sir.

Q. And you didn't make the estate pay you the $73,000 in cash, did you? A. They didn't have the money.

Q. You didn't make the estate pay you, as residuary legatee, the $73,000 in cash—you took the real estate, didn't you? A. That's correct.

Q. Now I show you Exhibit 20-T, which is the partnership return of income filed—I mean this caption, "Howard F. Knipp and Frank H. Knipp, Deceased, trading as John C. Knipp & Sons, taxable year ended January 31, 194," and I ask you to tell me—that is Exhibit 21-U, taxable year ended January 31, 1949—and I ask you to state what is the debit balance, namely, a red figure shown to be owning by John C. Knipp as of January 31, 1949 to the concern operating under the name of John C. Knipp & Sons as of that time? A. $14,669.17.

92 Q. So there was no adjustment made to the account of John C. Knipp during the taxable year ended January 31, 1949, was there? A. Yes, sir, there was.

Q. It is not reflected—wasn't reflected on that account—strike that.

of John C. Knipp, and I ask you to refer to the year 1949, and state if there were any adjustments made to the capital account for that year as shown by the books and records of the business trading as John C. Knipp & Sons? A. As of—you want February the 1st, 1952?

Q. No, sir, I said '49; we are only talking about—— A. I see—'49, it is $14,669.17.

Q. In other words, there was no adjustments made to his account during that year; isn't that correct, sir? A. According to this capital account here, that is correct.

The Court: What is your answer? I didn't hear you.

The Witness: According to this capital account there, that is correct.

Mr. Waring: All right. No further questions.

Mr. Stern: I have just one or two questions.

Further Redirect Examination

By Mr. Stern:

93 Q. You have testified that this real estate which was sold at a later date for $300,000—— A. That is correct.

Q. Was that $300,000 entirely in Frank's estate, or did you have some interest in that real estate? A. Frank Knipp's estate and I had a fifty-fifty interest in that.

Q. So the net to the estate would only be fifty per cent of that $300,000? A. That is correct.

Q. One more question: You testified a little while ago that the gross personal estate and the real estate as shown by your accounting as executor, Exhibit 11-K, was $278,090.01. Would you look at this exhibit and just check that again and read what it shows as the gross estate with which you were charged? A. Gross personal estate, $153,090.01; real estate, $125,000, making a total of $278,090.01.

Q. On the first page of Exhibit 11-K there is an item, the accountant charges himself with the amount of inventory filed, "List of debts, separate, $60,199.12." Can

you tell me what was included in that $60,199.12 as debts, separate? To refresh your recollection, would you look at the estate tax return which was filed? A. "Member of a co-partnership trading as John C.
94 Knipp & Sons, $54,985.96. Member of co-partnership trading as Knipp Aviation Industries, $5323.16."

Q. Were those assets of the estate? A. Yes.

Mr. Stern: That is all.

Mr. Waring: No further questions.

Mr. Paul: No further questions.

The Court: All right. The witness is excused.

(Witness excused.)

Mr. Paul: Petitioner rests, your Honor.

Mr. Waring: Respondent rests, sir.

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Petitioner's Exhibit 28

FINAL SETTLEMENT AGREEMENT UNDER CONTRACT NO. MCe-27073, PURCHASE ORDERS NOS. PDMC-44-34507 AND 45-44083

This Supplemental Agreement (herein called "Agreement"), entered into pursuant to the Contract Settlement Act of 1944 (herein called "Act"), as of the 6th day of March 1950, by the United States of America (herein called "Government") represented by the Department of Commerce (Maritime Administration) (herein called "Maritime") and Frank A. Knipp, Howard F. Knipp, and John C. Knipp, copartners doing business as John C. Knipp & Sons (herein called "Contractor"), and having their principal office and place of business at 600 South Pulaski Street, Baltimore, Maryland,

WITNESSETH THAT:

Whereas:

1. The Contractor and the United States Maritime Commission (herein called "Commission") entered into Con-

tract No. MCe-27073, Purchase Orders Nos. PD-MC-44-34503 and PD-MC-45-44083, on June 9, 1944, and February 16, 1945, respectively, which, together with any and all amendments and supplements thereto and changes therein, are herein called "Contract";

II. Pursuant to the Contract, the Commission notified the Contractor of the complete termination of the Contract for the convenience or at the option of the Commission;

III. The Contractor has filed a claim for certain amounts alleged to be due as a result of said termination; and

IV. Maritime has succeeded to all of the rights, powers, duties, and functions of the Commission with respect to the Contract;

Now, Therefore, the parties agree as follows:

ARTICLE 1

The Contractor certifies that all contract termination inventory[1] (including scrap) has been retained, sold to third parties, returned to suppliers, stored for or delivered to the Government, or otherwise properly accounted for, and any proceeds therefrom or retention prices therefor have been taken into account in arriving at this Agreement.

ARTICLE 2

(a) The Contractor certified that, prior to the execution of this Agreement, each of the Contractor's immediate subcontractors, whose claim is included in the claim settled by this Agreement, has either (1) properly submitted his

[1] The term "Contract termination inventory", as used herein, means all materials (including a proper part of any common materials) determined by the parties hereto, in connection with this Agreement, to be properly allocable to the terminated portion of the contract, except any machinery or equipment subject to a separate contract, or contract provision, specifically governing the use or disposition thereof.

claim on Standard Form 1a of the Office of Contract Settlement or (2) furnished to the Contractor a certificate stating (i) that all his subcontract termination inventory[2] (including scrap) has been retained, sold, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and any proceeds therefrom or retention prices therefor were taken into account in arriving at the settlement of the subcontract or subcontracts; and (ii) that the subcontractor has received from each of his immediate subcontractors whose claim was included in his claim either a claim properly submitted on said Standard Form 1a or a certificate substantially similar to clause (i) and this clause (ii) of this Article 2 (a).

(b) The Contractor hereby transfers and conveys to Maritime all the right, title, and interest, if any, which the Contractor has received or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to Maritime any and all of its rights relating thereto whether arising under negotiated settlement, formula determinations, or otherwise.

ARTICLE 3

In all cases where the Contractor has not previously paid its immediate subcontractors and suppliers (or their assignees) the amounts to which they are entitled, the Contractor shall, immediately on the effective date of this Agreement, pay to each of its subcontractors and suppliers (or to their respective assignees) the respective amounts

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[2] The term "subcontract termination inventory", as used herein, means all material (including a proper part of any common materials) determined by the parties to any subcontract under the Contract in connection with the settlement thereof, to be properly allocable to the terminated portion of such subcontract, except any machinery or equipment subject to a separate contract, or contract provision, specifically governing the use or disposition thereof.

to which they are so entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors and suppliers. If the Contractor fails to make any such payment within ten days, the Contractor will, upon request, return to Maritime the amount so payable to such immediate subcontractors and suppliers, less any amount then due and payable to the Contractor by them.

ARTICLE 4

(a) The Contractor has received the sum of $731,296.72 under the Contract, including the sum of $185,500.00 received as a partial payment in connection with its termination claim. Maritime hereby confirms and acknowledges that the partial payment of $185,500.00 has been refunded.

The Contractor hereby confirms and acknowledges that, by reason of progress payments in the amount of $535,796.72 and disposal credits in the amount of $105,109.02, an overpayment in the amount of $81,064.09 has resulted. The Contractor further confirms and acknowledges that interest on the partial payment of $185,500.00, from the date of payment to the date of refund, amounts to $16,005.25 which is in addition to the overpayment of $81,064.09 aforementioned.

(b) Upon execution of this Agreement, the Contractor agrees to pay to Maritime the sum of $97,069.34, representing the sum of $81,064.09, plus interest in the amount of $16,005.25 on the partial payment of $185,500.00.

(c) Upon payment of said sum of $97,069.34, as aforesaid, all rights and liabilities of the parties under the Contract, and under the Act insofar as it pertains to the Contract, shall cease forthwith and be forever released except:

(1) All rights and liabilities of the parties arising under the Contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, ap-

plications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(2) All rights and liabilities of the parties, if any, under the

(3) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of October 31, 1942 (Public No. 768, 77th Cong.; 35 U.S.C. secs. 80-96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the Contract.

(4) All rights and liabilities of the parties under the articles, if any, in the Contract applicable to options (except options to continue or increase the work under the Contract), covenants not to compete, covenants of indemnity, and Agreements with respect to the future care and disposition by the Contractor of Government-owned facilities remaining in its custody.

(5) All rights and liabilities of the parties arising under the Contract articles, if any, or otherwise, concerning defects in, and guarantees or warranties relating to, any completed articles or component parts furnished to Maritime by the Contractor pursuant to the Contract or this Agreement.

(6) All rights and liabilities, if any, of the parties under those clauses inserted in the Contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the topics of labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit."

(7) All rights and liabilities, if any, of the parties under the Act relating to removal and storage of Contract termination inventory.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in quintuplicate as of the day and year first above written.

UNITED STATES OF AMERICA
By: DEPARTMENT OF COMMERCE
(MARITIME ADMINISTRATION)

By:
L. C. SMITH
Chief, Division of Claims

JOHN C. KNIPP & SONS

By:
FRANK H. KNIPP, *Partner*
HOWARD F. KNIPP, *Partner*
JOHN C. KNIPP, *Partner*

Witness:

1. and
2.

As to the signature of
FRANK H. KNIPP

1. and
2.

As to the signature of
HOWARD F. KNIPP

1. and
2.

As to the signature of
JOHN C. KNIPP

Approved as to form:

Gladys W. Ringer
Chief, Claims Branch
Office of the General Counsel

State of Maryland
County of Baltimore

Before me, a notary public in and for the said state and county, personally appeared Frank H. Knipp, Howard F. Knipp, and John C. Knipp, who are known to me and who upon oath deposed and said that they are partners doing business under the name of John C. Knipp & Sons and that they are all of the partners constituting the said partnership.

Sworn to and subscribed before me this day of 1951.

.....
Notary Public
State of Maryland
County of Baltimore

(Seal)

My commission expires

Petitioner's Exhibit 29

U. S. DEPARTMENT OF COMMERCE
MARITIME ADMINISTRATION
WASHINGTON 25, D. C.

Address Reply to
Maritime Administration
And Refer to File No.
1.11/4160: 142(A)

March 12, 1951

John C. Knipp and Sons
600 South Pulaski Street
Baltimore, Maryland

Gentlemen:

Subject: Final Settlement Agreement
Contract No. MCe-27073
Purchase Orders Nos. PDMC44-34507 &
45-44683

Transmitted herewith is our Final Settlement Agreement in sextuplicate for execution by you. Please sign all

copies and return to this office. Upon execution thereof by an authorized official in this Division, one copy will be returned to you for your files.

Your attention is called to the fact that, on Page 6 of the Agreement, a private seal, in scroll, or otherwise, is to be affixed before the name of Howard F. Knipp, as partner and as executor of the estate of Frank H. Knipp, deceased partner, and also before that of John C. Knipp, as partner. In addition, the affidavit on Page 7 should be completed before the Agreement is returned to this office.

Very truly yours,

L. C. Smith
Chief, Division of Claims

Enclosures

Petitioner's Exhibit 30

JRB:CWT
146-38-35-129

ajd
Oct 1 1951

John C. Knipp & Sons
600 South Pulaski Street
Baltimore 23, Maryland

Re: John C. Knipp & Sons
Baltimore, Maryland
Contract Settlement Act of 1941

Gentlemen:

Please refer to your letter of June 13, and our letter of July 17, concerning the compromise settlement of the above-entitled matter.

This will advise you that the Department of Justice has accepted your offer to accept the sum of $454,732.63 in full and complete settlement of your claim filed with the Maritime Administration as a result of the termination of contract MCe-27073 and Purchase Orders PD-MC-44-34507

sum of $97,069.34. This will compromise your civil liability under the Contract Settlement Act in connection with the above contract and purchase orders.

Kindly remit the sum of $97,069.34 to this office in the form of certified or cashier's check.

Sincerely yours,

For the Attorney General
JAMES R. BROWNING
Acting Assistant Attorney General

Petitioner's Exhibit 31

UNITED STATES MARITIME COMMISSION
WASHINGTON 25, D. C.

October 30, 1947

In reply refer to BA-11

John C. Rhipp & Sons
600 S. Pulaski Street
Baltimore, Maryland

Attention: Mr. John J. West

Gentlemen:

Under Contract MCe-5304, Purchase Order CD-MC42-2566 you were paid a total of $4,750,461.00 whereas the true Commitment for the eighty-eight ships is only $4,428,000.00. This results in an overpayment of $322,461.00. That you were cognizant of this is shown by the following notation which appears on Schedule A, Invoice No. 2-1796, attached to Bureau Voucher 107799 MAR 16 45 MC-45:

b-value of material on hand for the construction of 9 cancelled vessels.	$322,461.00

Although the effective date of the cancellation of these nine vessels was March 8, 1944, you continued thereafter

based on the percentage of completion of ninety-seven vessels rather than eighty-eight.

Since it does not appear that this material was surrendered to the United States Maritime Commission, you were requested to forward immediately your check in the amount of $322,461.00 in order to close out this account.

Very truly yours,

/s/ T. H. Reavis
T. H. Reavis
Chief, Bureau of Accounts

Petitioner's Exhibit 32

UNITED STATES MARITIME COMMISSION
WASHINGTON 25, D. C.

November 26, 1947
In reply refer to BA-11

John C. Knipp & Sons
600 South Pulaski Street
Baltimore 23, Maryland

Gentlemen:

Reference is made to your letter of November 21, 1947, in reply to ours of October 30 by which you were requested to refund the amount of $322,461.00 representing overpayments to you under Contract MCe-5301, Purchase Order CD-MC-42-2566.

We note your reply that while it is true that the overpayment was made, and accepted by you, there are offsetting charges in a greater amount due to changes and extras and overtime which you state you are currently handling with your Procurement Division for possible issuance of addenda authorizing the additional charges.

However, since the General Accounting Office has made demand upon the Maritime Commission for immediate

recovery of this amount, it is requested that you forward your check in the amount of $322,461.00 without waiting for disposition of your claim for changes and extras. This will facilitate bookkeeping, and accounting for the Government agencies concerned and will avoid the confusion usually attendant upon a mixing of unrelated factors.

Very truly yours,

T. H. REAVIS
T. H. Reavis
Chief, Bureau of Accounts

Petitioner's Exhibit 33

UNITED STATES MARITIME COMMISSION
WASHINGTON 25, D. C.

February 21, 1949
In reply refer to: BA-252

John C. Knipp & Sons,
600 South Pulaski Street,
Baltimore (23), Maryland.

Gentlemen:

Reference is made to the very considerable bulk of correspondence between this office and yourselves, relative to your indebtedness to the Commission in the amount of $322,461.00, representing overpayments made by the Commission for work performed under Purchase Order CD MC 42-2566.

The overpayments resulted from a partial termination of the contract which reduced the commitment figure below the total of progress payments made up to that time. This indebtedness was billed to you on invoice MC 47 12-270.

You are advised that we are processing a number of your billings totalling $177,733.05, checks for which will be drawn and deposited to the account of the Treasurer of

the United States for application and off-set to your indebtedness of $322,461.00. This will leave a net amount still due of $144,727.95, which we have been given to understand you will liquidate by check upon receipt of this notification. A list of the billings comprising the figure of $177,733.05 is contained on the attached statement, which was received from you some time ago. Three of the four items that have been crossed off on this statement were never received in this office. The fourth item in the amount of $592,743.82 has been voluntarily withdrawn by you.

We will therefore expect to receive your check in the amount of $144,727.95 in the next few days.

Very truly yours,

A. L. RENIAK

A. L. Reniak,
Chief, Receipts and Disbursements Branch

Enclosure.

STATEMENT

JOHN C. KNIPP & SONS, DR.
600 SOUTH PULASKI STREET, BALTIMORE 23, MARYLAND

In account with
U. S. Maritime Commission
Washington, D. C.
Attn: Mr. A. L. Reniak
Chief Receipts & Disbursements Branch
Terms: Net 30 Days

1947			
Mar. 5	Inv.	3-5245—PO MC-47-855	$942.50
July 25		7-5502—PO MC-47-705 Talamanca	4,017.30
29		7-5510—PO MC-47-1356 Talamanca	16,578.00
29		7-5511—PO MC-47-1559 Quirigua	771.00
29		7-5512—PO MC-47-1559 Chiriqui	1,220.00
29		7-5513—PO MC-47-1559 Antigúa	489.00
Aug. 27		8-5525—PO WSA 15743 Contessa	6,100.00
27		8-5526—PO MC-47-1560 Contessa	38,734.00
Dec. 1		12-5796—Changes, Extras & Overtime U.S.M.C. Contracts #3375 & #5304	592,743.82
15		12-5731—PO MC-47-1356 Jamica	35,288.00
15		12-5732—PO MC-47-1383 Jamica	14,511.00
15		12-5733—PO MC-47- 962 Jamica	150.00
15		12-5734—PO MC-47-1414 Jamica	2,351.00
15		12-5735—PO MC-47- 908 Jamica	40.00
15		12-5736—PO MC-47-1559 Jamica	1,580.00
15		12-5737—PO MC-47-1393 Jamica	1,275.00
1948			
Jan. 6		1-5787—PO MC-47- 855 Veragua	156.25
6		1-5788—PO MC-47-1414 Veragua	2,351.00
6		1-5789—PO MC-47- 908 Veragua	40.00
6		1-5790—PO MC-47- 962 Veragua	150.00
8		1-5805—PO MC-47-1383 Veragua	11,803.00
8		1-5806—PO MC-47-1559 Veragua	1,193.00
8		1-5807—PO MC-47-1472 Veragua	5,554.00
9		1-5810—PO MC-47-1356 Veragua	38,199.00
9		1-5812—PO MC-47- 979 Brazil	300.00
12		1-5820—PO MC-47-1185 Talamanca	40.00
19		1-5842—PO MC-1383 Talamanca	385.00
Mar. 30		3-5950—Ltr. 11-15-47 Jamica	780.00
		Total	$777,741.87
			600,008.82
			$177,733.05

322,461.
177,733.05

$144,727.95
Pd. 120,000.

JOHN C. KNIPP AND SONS

[redacted]

MARINE [redacted]

7-78
520

34

VOUCHER

CHECK NO 3755

BALTIMORE 23, MD. April [illegible], 1949

PAY KNIPP [illegible] 70000 [illegible] 00 CTS DOLLARS

$ 70,000.00

United States Maritime Commission
Washington 25, D. C.

[redacted]

JOHN C. KNIPP AND SONS

Howard F. Knipp

AUTHORIZED SIGNATURE

[illegible] account your letter 2/21/49 -
BA-252

THE FIDELITY TRUST COMPANY
BALTIMORE, MD.

AUTHORIZED SIGNATURE

Vo. No. [redacted]

JOHN C. KNIPP & SONS

MARINE INTERIORS — MILLWORK

7-16
520

Ck. No. 21502

BALTIMORE 23, MD. June 13, 1949

PAY [redacted] DOLLARS

TO THE ORDER OF United States Maritime Commission,
Washington 25, D. C.

$ 20,000.00

JOHN C. KNIPP & SONS

Howard F. Knipp
AUTHORIZED SIGNATURE

Franklin Knipp
AUTHORIZED SIGNATURE

BALTIMORE NATIONAL BANK
BALTIMORE, MD.

7-16
520

JOHN C. KNIPP & SONS

MARINE INTERIORS — MILLWORK

BALTIMORE 23, MD.

Vo. No. _____

Ck. No. 21503

June 30, 1949

PAY KNIPP 10000 AND 00 CTS DOLLARS

TO THE ORDER OF

United States Maritime Commission
Washington 25, D. C.

$ 10,000.00

JOHN C. KNIPP & SONS

Howard F. Knipp
AUTHORIZED SIGNATURE

Franklin Knipp
AUTHORIZED SIGNATURE

BALTIMORE NATIONAL BANK
BALTIMORE, MD.

Vo. No. [redacted]

JOHN C. KNIPP & SONS

MARINE [redacted] MILLWORK

7-16
520

Ck. No 21510

BALTIMORE 23, MD. July 6, 1949

PAY [redacted] DOLLARS

TO THE ORDER OF

United States Maritime Commission,
Washington 25, D. C.

$10,000.00

JOHN C. KNIPP & SONS

Howard F. Knipp
AUTHORIZED SIGNATURE

Franklin Knipp
AUTHORIZED SIGNATURE

BALTIMORE NATIONAL BANK
BALTIMORE, MD.

7-16
520

JO[redacted] KNIPP & SONS

MA[redacted] WORK

Vo. No. _____

Ck. No 21531

[redacted]ALTIMORE 23, MD. [redacted]ptember 26, 1949

PAY KNIP[redacted] 00 CTS DOLLARS

TO THE ORDER OF

United States Maritim[redacted]
[redacted]ashingt[redacted]m 25, D. C.

$10,000.00

JOHN C. KNIPP & SONS

Howard F. Knipp
AUTHORIZED SIGNATURE

Franklin Knipp
AUTHORIZED SIGNATURE

BALTIMORE NATIONAL BANK
BALTIMORE, MD

Vo. No. [redacted]

JOHN C. KNIPP & SONS

MARINE INTERIORS — MILLWORK

7-16
520

Ck. No. 21563

BALTIMORE 23, MD. January 6, 1950

PAY TO THE ORDER OF [redacted]

KNIPP $ 24,727.95 AND 95 CTS DOLLARS

Maritime Commission
, D. C.

$ 24,727.95

JOHN C. KNIPP & SONS

Franklin Knipp
AUTHORIZED SIGNATURE

Howard F. Knipp
AUTHORIZED SIGNATURE

BALTIMORE NATIONAL BANK
BALTIMORE, MD.

102

The Clerk: Docket Numbers 43545, 50153, 50154, and related cases.

Mr. Paul: For the Petitioner, Randolph Paul, Carolyn Agger and Julian Stein.

Mr. Waring: Paul E. Waring for the Respondent.

The Court: Are the parties ready to proceed?

Mr. Paul: Petitioner is ready.

Mr. Waring: Respondent is ready.

The Court: I don't recall, this case was consolidated with two other docket numbers?

Mr. Paul: These three docket numbers are now consolidated.

The Court: We had a hearing or partial hearing?

Mr. Paul: February 8.

The Court: 50153, 50154, one docket number is 42545?

Mr. Paul: That is correct.

The Court: Will all the evidence relate to that docket number or will it also involve the other docket numbers partially heard?

Mr. Paul: The evidence will be primarily—we don't know just what will happen. I don't know what Mr. Waring is going to do. The evidence will primarily relate to the estate tax case, Docket Number 42545. However, the cases are consolidated.

4

The Court: I think perhaps it might not be bad if you would kind of educate the Court again. I have forgotten what the issue was.

Mr. Paul: I will try to do that, your Honor.

Mr. Waring: The testimony this morning will relate to all three dockets, some evidence.

The Court: All right. Petitioner's Counsel will state what the issues are.

Mr. Paul: It might help the Court if I do that a little more in detail than would be needed in the usual case.

The Court: I would like to surely understand it. It will make it much more intelligent in hearing it if I do.

OPENING STATEMENT ON BEHALF OF THE PETITIONER
BY MR. PAUL

Mr. Paul: As your Honor said, these three cases are consolidated. The highest two docket numbers are income tax cases; the estate of Frank H. Knipp, Howard F. Knipp, Executor, Docket Number 42545, is an estate case.

The Court: What is the relationship between the Knipps here?

Mr. Paul: Frank, the deceased, the decedent of the estate tax case, is an uncle of Howard Knipp. Then your Honor will hear mention of John Knipp, who is also the nephew of Frank Knipp.

The Respondent, in this Docket Number 42545, has determined a deficiency of $120,980.50.

The date of death of Frank H. Knipp, the decedent, was November 21, 1947. At the time the two income tax cases came on for hearing in February, we thought we had arrived at a settlement in principle, of the estate tax case. But we continued that case in the belief that no trial would be necessary. Since that time, the settlement which we thought had been reached, has been repudiated by the technical staff.

Now, unfortunately, it is necessary to try the estate tax case.

As background, for the purpose of enabling your Honor to better follow the testimony, I will recall that Frank H. Knipp, up to the date of his death, November 21, 1947, was a partner in the firm of John C. Knipp and Sons.

Howard F. Knipp, his nephew, was also a partner in that firm. John Knipp, brother of Howard Knipp and a nephew of Frank, was also a partner under the partnership agreement of July 7, 1943.

The Court: What business is the firm engaged in? What was the nature of it?

Mr. Paul: It was in the wood-fitting business, furniture business, that is, interior woodwork business and the fur-

niture business. That is all pretty well developed in the previous record.

The partnership agreement to which I referred, is
6 Exhibit Number 4-D, in the other two docket numbers. John Knipp withdrew from active participation in the affairs of the partnership on August 1, 1945, but no settlement of his capital interest in the partnership has yet been made.

I would like to say that the Attorney for the Respondent has been extremely cooperative in connection with stipulating the facts. As a result, we have entered into a stipulation which will be offered in evidence, which will considerably expedite this trial.

The stipulation will concede the allowance of certain additional deductions to the Petitioner's estate, consisting of certain debts not allowed as deductions in the deficiency letter.

The letter also covers a few other items of deduction and adjustment. As is usual in estate tax cases, there will have to be adjustments on account of additional attorney's fees not now determinable, arising out of the representation of the estate in this case, and on account of other additional administrative expenses incurred after the estate tax return was filed.

The Court: Rule 50? For that?

Mr. Paul: Yes, Rule 50 and 51 will take care of that later.

The deficiency notice in the case attached to the petition is extremely short and extremely vague, and in-
7 tensely uninformative. It was therefore insufficient to enable the petitioner to determine what adjustments were made by the Respondent, and what issues would be presented on trial.

On August 11, 1954, a motion of the petitioner to make more definite and certain came on to be heard before Judge Barr. The hearing of this motion, and later conversations with counsel of the Respondent, have somewhat

clarified the position taken by the Respondent in the ninety day letter. I think I can now state the issues for your Honor's benefit, which wouldn't have been possible before this clarification.

If your Honor will look at the deficiency letter attached to the petition, you will notice four items of additions to the value of the net estate. The first, entitled, "Real Estate," in the amount of $41,549.20, is not in contest. The stipulation to be filed will concede that this adjustment is proper.

There is no dispute about the second addition, "Stocks and Bonds," in the deficiency letter, in the amount of $542.39.

The next two items, entitled, "Insurance," $90,512.32, and "Other Miscellaneous Property," in the amount of $228,209.41, are in dispute. However, the adjustment of $228,209.41 has been changed in amount, as will develop.

This adjustment for "Other Miscellaneous Property," is mysteriously described as being "representing decedent's interests in the partnership of John C. Knipp and Sons. Value determined at date of death as provided in Section 911(j and k) of Internal Revenue Code."

This is mystifying to petitioner, because subdivision (j) of 811 is the optional valuation provision for estates, which isn't in issue here.

The Court: Here the date of death is controlling?

Mr. Paul: That is correct.

With some qualification, as will be developed. Subdivision (k) refers to valuation of unlisted stock and securities. You have no unlisted value of stock and securities in the case.

Adjustments made by the Respondent since the date of the deficiency letter charged the amount of respondent's originally claimed addition to the value of the net estate.

The Court: Does it increase or diminish?

Mr. Paul: It increases. Under a stipulation which will

be filed, various items in dispute under this heading have been eliminated. This principal remaining item represents half of the profits of the partnership of John C. Knipp and Sons from February 1, 1947, to November 21, 1947, the date of Frank's death.

I might interpolate there by saying—

The Court: What date, February what?

Mr. Paul: February 1, 1947 to November 21, 1947. February 1, 1947 was the beginning date of the fiscal year of the partnership. November 21, 1947 was the date of Frank's death.

The Respondent claims that one-half of the profits representing Frank's alleged share of income for the fiscal year period beginning Febrary 1, 1947, should be added to the value of his partnership interest.

The Court: Will you repeat that?

Mr. Paul: The Respondent claims that one-half of the profits of John C. Knipp and Sons, representing Frank's alleged share of income for the fiscal period beginning Febrary 1, 1947, should be added to the value of his partnership interest for estate purposes.

At the hearing of August 11, 1954, before Judge Barr, on the petitioner's motion to make more definite and certain the elements of Respondent's increase under the heading of "Other Miscellaneous Property," the Respondent calculated the profits of the partnership at $369,897.08, half of which would be $184,948.54.

The parties have agreed, however, that the correct income for this period was $351,672.05. The Respondent would therefore claim that one-half that amount should be added to Frank's partnership interest as reported for estate tax purposes.

However, one further qualification is necessary there. Under a stipulation to be filed, this amount should be further reduced by $20,700, representing the share of profits to which Frank was entitled prior to his death under the heading of "salary." This $20,700 has been treated by

the Respondent as Frank's distributable share of the partnership income, Docket No. 50154.

Therefore, the correct adjustment, if the Respondent is sustained, in his contention, should be $175,672.05 less $20,700, or $154,972.05.

The answer to the contention of the Respondent that half of the profits of John C. Knipp and Sons for the period beginning on February 1, 1947 should be added to the value of Frank's capital interest in the firm, requires an analysis of the partnership agreement of July 7, 1943, which is Exhibit 4D, in Dockets 50153 and 50154.

That agreement states that in the event of any partner's death—now I quote, "the amount to the credit of said deceased partner from the firm's books at the beginning of the fiscal year, less the amount of his withdrawals over salary, shall be paid to the executors or administrators of said deceased partner, and the same shall be in full settlement of the deceased partner's interest in said partnership."

In other words, in event of his death, the partner got the amount of his capital interest on the books at the beginning of the fiscal year.

Because of this provision, Howard Knipp, in Docket Number 50153, included in his return for the calendar year 1948, all the profits of John C. Knipp and Sons for the period ending January 31, 1948, which was the fiscal year beginning February 1, 1947. None of these profits were included in Frank's income tax return for the last year of his life.

Nor under the partnership agreement were any of these profits credited to Frank's capital account. Accordingly none of them were included in valuing his partnership interest in his estate tax return.

Although he claims in Docket No. 42545, the estate tax case of the Estate of Frank H. Knipp, that one-half of the profits of the partnership of John C. Knipp and Sons for the period beginning February 1, 1947, should be added to Frank's capital interest in John C. Knipp and Sons,

reportable in his estate. Respondent also continues to claim in Docket No. 50153, that Howard is taxable on all these profits.

In other words the Respondent wants to tax the profits as income to Howard, getting up to a ninety-one per cent rate, and also tax them at thirty-two per cent rate as part of Frank's estate, which would make a total tax of about one hundred and twenty-two per cent on these profits.

12 In the trial of Docket No. 50153 and Docket No. 50154, the Petitioner, Howard Knipp, did not claim not to be taxable on the share of the partnership profits which the Respondent now claims should be added to Frank's estate. On that trial, your Honor will remember that the question presented was whether the death of Frank H. Knipp in November 1947, terminated the partnership of John C. Knipp and Sons and required the inclusion in Howard's and Frank's 1947 returns of their share of the earnings of the partnership for the fiscal year ended January 31, 1948.

In other words, on this trial the Petitioner took the position that the question was not what income should be reported by Howard and Frank, but rather when that income should be reported.

The Commissioner's inclusion of the same partnership earnings in Frank's estate as he has included in Howard's taxable income, now raises the additional question, whether this income, that is, the half share of profits added to Frank's estate, should be reported by Howard at all.

The position of Petitioner still is that this half-share of profits are taxable to Howard, but in the calendar year 1948, not in 1947, and should not be included in valuing Frank's capital interest in John C. Knipp and Sons. But the profits cannot belong to Howard and be taxed to him and at the same time be regarded as belonging to Frank, and added to Frank's capital interest.

13 If this half share of profits is to be included in Frank's capital interest, and in the estate, then these same earnings should not be taxed to Howard.

This Petitioner, the Petitioner Howard, is therefore now obliged to make this additional alternative point.

I don't know, and I am at a loss to explain how the Respondent will reconcile the taxation of this half share of profits to Howard, and the inclusion of the same profits in Frank's capital interest. If he thinks they should be taxed to Howard, because they went to Howard under the partnership agreement, then he should respect the other clauses of the partnership agreement, which denied Frank any interest in the profits after the beginning of the fiscal year in which his death fell.

You cannot honor one part of the partnership agreement and repudiate another part.

No doubt the Respondent's position in the estate case is based upon the decision of this Court in the Gannon case, 21 Tax Court No. 121. In this case the partnership agreement gave the surviving partners the option to purchase the decedent's interest for the amount of his capital account at the beginning of the year in which his death fell, or of liquidating the partnership after death.

In the event of liquidation, the estate would have
14 been entitled to the share of earnings to date of death. At date of death, it was impossible to know whether the partners would exercise the option, or would liquidate.

Furthermore, under the terms of the partnership agreement in the present case, a partner had no legal right to a share of partnership earnings unless he lived until the end of the year. His living to the end of the partnership year was a condition precedent to his becoming entitled to any share of the property at all. This was not true in the Gannon case. In that case, under the partnership agreement, the partners had a legal right to the partnership earnings up to the date of his death, which right might be defeated by the survivor's exercise of the option to purchase, after his death; but not necessarily so.

The distinction really is between an existing right, which might be defeated in the Gannon case, and the lack

of any right at all until the end of the fiscal year, as in the Knipp case.

The other issue, the life insurance issue, the deficiency letter adds $90,512.32 of life insurance to the net estate. The explanation of this item is that this amount is included as part of the gross taxable estate by reason of indirect payments of premiums of decedent as provided under 811 (g) of the Internal Revenue Code.

First, preliminarily, under this item, your Honor will note that the value of Frank's partnership interest proposed by the Respondent, includes the cash surrender value of the life insurance policies on Frank's life, owned by the partnership.

The Petitioner does not object to the inclusion of this cash surrender value to the extent of Frank's interest in the partnership, if no part of the face amount of the policy, the $90,512.32, is included in the estate. But if there should be included in Frank's estate any portion of the face value of the insurance proceeds, there would be a plain duplication if the cash surrender value of the policies is also included in the value of the partnership interest.

The second preliminary point under the insurance controversy is, relates to the life insurance policies on the life of Howard Knipp. The Respondent has valued Frank's partnership interests by including in it an allocable portion, which is fifty per cent, of the cash surrender value of this insurance on the life of Howard.

The Petitioner's point here is that if, under some theory, Frank's estate is held to own or quasi-own the policies on his life, then consistency requires that Howard had the same relationship to the policies the partnership owned on his life.

Therefore, if the face amount of the policies on Frank's life are to be included in Frank's estate, the cash surrender value of the policies on Howard's life should not be included in the value of Frank's partnership interests.

Those are preliminary points under the heading of insurance. But the main point in regard to insurance is whether any of the insurance on Frank's life should be included in the estate.

The Commissioner has included the face amount of the policies. Copies of these policies will be stipulated in evidence. They were all partnership assets. The partnership was the beneficiary and the owner of the policies at the date of Frank's death. Frank had no interest in the policies. He had no ownership. All premiums on the policies had been paid by the partnership.

The partnership used some of its earnings to acquire the insurance in order to put the partnership in funds to settle the capital account of any partner who might die.

The ninety-day letter seems to take the position that Frank indirectly paid the premiums on the policy, that this makes them taxable under Section 811(g) of the Code. As I have indicated, the premiums were paid by the partnership.

The situation is therefore covered by the decision of this Court in the estate of George Herbert Atkins, 2 Tax Court 332, 342, in which the payment by a partnership of premiums on insurance on the life of a partner did not constitute the indirect payment of premiums by the partner.

Even if it should be held that Frank indirectly paid part of the premiums because of his interest in the partnership, which was forty per cent, from January 10, 1941 to January 31, 1946, and fifty per cent from then on until his death, the most that could be included in Frank's estate was that portion of the insurance purchased by Frank's forty and fifty per cent interest after January 10, 1941. If this amount should be included in Frank's estate, the value of his partnership interest should be further reduced by a similar percentage of the cash surrender value of the policies on Frank's and Howard's life.

Those are the principal issues. We also unfortunately have not been able to dispose by agreement of two or three

additional minor issues which I should briefly state to your Honor, because some testimony will relate to these items.

One small item which has not been stipulated involves the Federal income tax liability of Frank in the amount of $8,881.70. His estate reports this liability on account of the receipt by Frank of $20,700 of salary in 1947 before his death. It was reported in the return of the estate filed for the calendar year 1948.

In Frank's income tax case, Docket No. 50154, the Commissioner takes the position that this $20,700 is income for the last year of Frank's life. However, irrespective
18 of whether that amount is taxable in the period ending with Frank's death, or in the year ending January 31, 1948, it seems clear that the estate had a Fereral income tax liability on account of the receipt by Frank of $20,700 prior to his death.

This liability amounted to at least $8,881.70, as reported by the estate, and it would seem that this is a proper deductable debt for the estate for estate tax purposes.

Of course, this deduction will become $18,500.38, if the Respondent prevails in Docket 50154. Accordingly, depending upon the outcome of that case, there should be an additional deduction in the estate tax case of either $8,881.70, or $18,500.38.

The next minor item of controversy relates to an adjustment to Frank's capital account of $4,328.34. This item represents the interest liability of the estate on account of overpayment of $185,500 by the Maritime Commission to John C. Knipp and Sons in 1946.

Here I refer your Honor to Petitioner's Exhibit 28, of the former trial.

The over-payment was refunded to the Maritime Commission in 1947. In 1951, John C. Knipp and Sons, the partnership, agreed to pay interest on the over-payment, which interest included $8,656.67, for the period up to January 31, 1947. This interest liability was part of
19 the interest of $16,005.25, mentioned in Petitioner's Exhibit 28, the final settlement agreement with the Maritime Administration.

This liability is not reflected in computing Frank's capital account in the estate tax return or in computing the value of Frank's capital account in the deficiency letter.

Another small item relates to interest on an income tax refund. Part of Frank's taxable estate is recomputed by the Respondent as shown in the stipulation which will be filed with the Court.

Here is an item of interest on Federal income tax refund of $55,194.94, for the years 1943 to 1945. The interest included in Respondent's recomputation of taxable estate is $13,516.55. Of this amount, only $10,204.85 accrued up to the date of death, November 21, 1947.

Obviously, the $3,011.70 accrued after the date of Frank's death, is not includible as an asset of his estate.

Now unfortunately, it is necessary to mention one more point, which may or may not be in controversy. Neither in his ninety day letter, nor in Exhibit 48-PP, which has been prepared by Counsel for the Respondent, nor in Counsel's statement in the record on our motion to make more definite and certain, has the Respondent included any good will in the valuation of Frank's partnership interest.

So far, the Commissioner has made no contention that any amount of good will should be assigned to Frank's partnership interest. However, in the hearing before Judge Barr, on August 11, 1954, transcript pages 6 to 7 of that hearing, the Commissioner's representative refused to state whether he would contend that good will should be included in the partnership interests valuation. The valuation as now constituted, or as it will be shown in Exhibit 48-PP to the stipulation, includes no good will. But we feel obliged under the posture of the case, to present to your Honor testimony showing that the partnership had no good will, and that the Commissioner's valuation of Frank's partnership interest cannot be justified by attributing any value of good will.

I am somewhat disappointed that our efforts to simplify the trial by eliminating the necessity of producing any

evidence on good will failed, but that is the way those things go.

To summarize the principal issues:

One is the valuation of Frank's partnership interest in the partnership of John C. Knipp and Sons. Ordinarily, valuation is a question of fact; but, the main sub-issues here—whether one-half of the partnership earnings from the beginning of the fiscal year to the date of Frank's death, that is, February 1, 1947 to November 21, 1947, should be included in the valuation of Frank's estate,
21 is a question of law. Of course, whether any good will should be included in the valuation is a question of fact.

The other principal issue is whether any life insurance is includible in Frank's estate. This is also largely a question of law.

Then there are the subsidiary issues I have mentioned.

I hope that the testimony will not occupy more than two or three hours.

Thank you.

The Court: Respondent's Counsel?

Mr. Paul: I move, your Honor, the Court for leave to file an amended petition, second amended petition. Original and four copies are now being handed to the Clerk of the Court.

The Court: The leave to file petition will be granted.

Mr. Waring: Same right in which to answer?

The Court: The same right will be accorded the Respondent.

Mr. Waring: Thank you, sir.

Opening Statement on Behalf of the Respondent

By Mr. Waring:

Mr. Waring: I am only going to discuss Docket Number 42545, the estate tax case before us, in view of the
22 fact that Mr. Paul covered the other cases. So additional statements by me are deemed unnecessary.

The estate tax involved in Docket No. 42545 is $120,980.52. The date of death of Frank Knipp was November 21, 1947.

To summarize issue one, remaining in this docket, is whether the proceeds of life insurance on the life of the decedent of $90,512.32 were properly includible in the gross estate, and subject to tax.

Issue two, whether the net corrected taxable estate of $487,458.39, as shown in Exhibit 48-PP, attached to the stipulation of fact, which will be offered in evidence, should be reduced by one-half of the corrected amount of earnings of John C. Knipp and Sons, from February 1, 1947 to the date of Frank's death on November 21, 1947, in the stipulated amount of $154,972.05, Exhibit 48-PP.

The third issue raised by the second amended petition, is whether $3,311.70 of the total amount of interest of $13,516.55, representing the portion of interest paid on the tax refund attributable to the period, November 21, 1947 to December 31, of that year, should be included in the gross estate.

The facts with respect to that issue are set forth in Paragraph 7 of the Stipulation of Facts:

> With respect to the item of $4,328.34, alleged to represent interest paid on a refund, Respondent knows nothing about that issue, sir, and it will be up to the Petitioner to prove it.

With respect to the life insurance item as of the date of death of Frank on November 21, 1947, John C. Knipp and Sons was beneficiary under life insurance policies issued on the life of the decedent, the proceeds of which totaled $90,521.32. With the exception of one policy having a value of $5,000, Exhibit 42-JJ, attached to the Stipulation of Facts, and issued by the Sun Life Assurance Company of Canada, Policy Number 1011753, all of the policies, Exhibits 36-DD to 41-II inclusive, and 43-KK to 45-MM inclusive, attached to Stipulation of Facts, contained an assignment to John C. Knipp and Sons and the decedent retained no rights in the policies except as to those rights

which flowed from his interest in the partnership of John C. Knipp and Sons.

As to the Sun Life Assurance policy, the insured, Frank H. Knipp, "reserved" to the assignee, originally the Baltimore National Bank, all rights as to the cash surrender values, loans, dividends, and all other handling of the policy without consent or signature of the insured, Frank H. Knipp, assignor.

The assignment to Baltimore National Bank was released and the Baltimore National Bank on July 31, 1945, transferred and set over all right, title, and interest in said policy to John C. Knipp and Sons, without the reservations contained in the assignment of John C. Knipp and Sons to the Baltimore National Bank on May 16, 1939.

Thus, from May 16, 1939, to the date of his death on November 21, 1947, the decedent, Frank H. Knipp, had the right to change the beneficiary under the policies, or borrow on the security of the policies.

The assignments of decedent's interest in the other policies to John C. Knipp and Sons were all made prior to 1932.

As of the date of death, the sole partners of John C. Knipp and Sons consisted of the decedent and Howard F. Knipp, nephew of the decedent, in the partnership of John C. Knipp and Sons.

With respect to issue two, that is, whether or not the gross estate should be reduced by one-half of the profits or by the sum of $154,972.05, as redetermined by the Respondent, as of the date of death of decedent on November 21, 1947, Howard F. Knipp and Frank H. Knipp were the sole and equal partners of the business known as John C. Knipp and Sons.

The value of Frank's one-half interest in the partnership was reported for Federal estate tax purposes, at $54,875.96. That is Exhibit 35-CC, attached to the Stipulation, Schedule F, thereof.

Respondent contends that the value of Frank's
25 one-half interest in the partnership of John C.
Knipp and Sons, as of the date of death on November 21, 1947, was $237,797.11, Exhibit 48-PP attached to Stipulation of Fact, which sum includes one-half of the partnership income at the date of death of Frank, in the amount of $184,948.54.

The Respondent and the Petitioner agree that one-half of the partnership income from February 1, 1947 to November 21, 1947, as shown in the Notice of Deficiency, to be $184,948.54, should be $154,972.05.

The Petitioner contends that no portion of the earnings of the partnership from February 1, 1947, to the date of death of November 21, 1947, of $154,972.05, should be included in computing the decedent's interest in the partnership for Federal estate tax purposes as of the date of the decedent's death. Respondent believes that the sum of $90,521.32, representing the value of the insurance policies which was included in the gross estate subject to Federal estate tax, was properly includible therein, since the premiums on these policies was paid out of partnership funds indirectly by the decedent, who was an equal partner in the partnership of John C. Knipp and Sons as of the date of his death.

Under their method of bookkeeping, the insurance premiums on these policies was paid prior to the distribution to each of the beneficiaries. That is nothing more
than a bookkeeping system, and is not binding,
26 either upon this Court or the Respondent.

If these sums had not been paid by the partnership prior to distribution, the insured under the policies would have had to pay these premiums, out of the income of the partnership after it had been received by them individually. The manner of payment under Respondent's theory in this case is not controlling here.

The fact is that the partnership income was used and was used in proportion to the partnership interest, in the partnership.

I don't believe it is necessary to discuss the item of $154,972.05, other than to say that Respondent believes that the case of this Court, in the estate of Robert R. Gannon, 21 T.C. #121, is controlling here; and the sum of $154,972.05, having been earned by Frank between the beginning of the year and the date of death, it should be includible in his gross estate as a measure of his interest in the partnership. And even though under the partnership agreement, Paragraph 11, the earnings of the partnership from February 1, 1947 to the date of death of Frank on November 21, 1947 were held to be the income and distributable to Howard, the surviving sole partner, nevertheless, for Federal estate tax purposes, that sum should be included in the gross estate, so the Respondent contends.

The Court: Does the Petitioner's Counsel care to
27 make any further statement?

Mr. Waring: I think I ought to make one more statement in view of Mr. Paul's statement with respect to good will.

Respondent has not included in the gross estate any value for good will. Other than that, I will say nothing.

The Court: That is not in issue then?

Mr. Waring: Other than that, I will say nothing further about it. I don't believe I should. We didn't include it in the gross estate. We have stipulated what the gross estate was, how it was determined.

The Court: That obviates the necessity of any evidence on it.

Mr. Paul: If it is clearly understood that no contention will be made—

The Court: I understand by Counsel's statement, Counsel is not contending for good will.

Mr. Waring: We are not contending for good will.

Mr. Paul: That will dispose of that item of good will.

Miss Agger: Before proceeding with Mr. Knipp, we had perhaps better file the stipulation bearing on this matter.

The Court: The parties offer in evidence the Stipulation of Facts; together with any exhibits attached? Are there any exhibits attached?

Miss Agger: There are Exhibits 35-CC through 48-PP.

The Court: They are referred to in the Stipulation and made part thereof?

Miss Agger: They are.

The Court: The stipulation just mentioned, what is the date of that stipulation? Is there another stipulation already in evidence, or is this the first?

Miss Agger: This is the first one that includes the estate tax matter. It is called an Additional Stipulation of Fact.

The Court: The stipulation of fact will be received in evidence, again with the exhibits attached and therein referred to made part of the record.

Miss Agger: There is one further correction that should be made in regard to the original stipulation filed at the hearing in February. In that record, there is a reference to Exhibit BB. This exhibit should be re-numbered as Stipulation Exhibit 12-L.

The Court: That Exhibit number changed from BB to what?

Miss Agger: 12-L. It is sometime referred to as BB, in that hearing.

Exhibit 12-L was incorrectly attached to the original stipulation and should now be re-numbered as QQ.

The Court: I understand Respondent's Counsel is agreeable to the suggested change?

Mr. Waring: That is agreeable with Respondent.

The Court: All right.

Miss Agger: Now I have made a demand for certain income tax and partnership returns on Mr. Waring. I don't know what he has this morning. I will not find it necessary now to have any return except the partnership return for the fiscal period ending January 31, 1934. The others were asked for in connection with the good will issue.

which I gather we are not going to have here this morning.

The Court: That issue has been eliminated.

Miss Agger: That is right. I still ask you whether you have with you the partnership return for the fiscal year ending January 31, 1934.

Mr. Waring: 1934? I do not have that return, sir. I don't have the return. That is as far as I will go now.

Miss Agger: I know why you don't. I have a letter from the Collector here which states that it has been destroyed.

The Court: What?

Miss Agger: Destroyed. I mention this because I might want to use our retained copy.

Mr. Waring: I know it is destroyed.

Miss Agger: We can proceed with Mr. Knipp. If you don't mind, I will call you "Mr. Howard." I understand your brother, Mr. John, will be a witness as well.

The Clerk: Your name and address?

The Witness: Howard F. Knipp, 204 Good Wood Gardens, Baltimore, Maryland.

Whereupon,

Howard F. Knipp

was called as a witness by and on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Miss Agger:

Q. Mr. Howard, the Commissioner here has included in your Uncle Frank's estate, the face value of certain life insurance policies in the approximate amount of $90,000. Did you consider that these policies were assets of the partnership?

Mr. Waring: Just a minute. The Court is not interested in whether he considered it or not.

The Court: I don't think the opinion of the witness would be controlling, though the Court would permit him to answer the question. The effect to be given to it doesn't seem to be very much. Answer it.

By Miss Agger:

Q. Answer the question: A. Yes, I considered them to have such a partnership relation.

Q. Did you, or any other partner, to your knowledge, exercise any control over the policies? A. No, sir.

Mr. Waring: That is objected to. The word "control," is very broad here, and is of no evidentiary value in the way it is stated. Certainly if they were partnership assets, Mr. Howard Knipp was a partner, and his uncle, Frank, who was a partner, they certainly exercised control.

Miss Agger: I use the word personally in there. I can make it more specific if you wish.

Mr. Waring: I object to his answer, ask it be stricken.

The Court: Repeat the question as you amended it.

By Miss Agger:

Q. I say did you or any other partner personally exercise any control over the policies?

The Court: I will permit that. I don't know what legal effect, if any, will be given to the testimony.

The Witness: No.

By Miss Agger:

Q. Were the policies ever pledged to secure personal loans of Frank's? A. No.

Q. Were the policies pledged from time to time by the partnership to secure loans to the partnership?

A. Yes, they were.

Q. Who paid the premiums on these policies? A. The firm of John C. Knipp and Sons.

Q. Did the partnership also carry insurance on your life? A. Yes, it did.

Q. Who paid the premiums on it? A. The firm of John C. Knipp and Sons.

Q. Now I would like to turn my attention to the major issue, to the only issue now with regard to the partnership interest.

You testified in the earlier hearing, last February, that you first started working with the firm of John C. Knipp and Sons in 1920? A. That is correct.

Q. At that date, who were the partners in that firm? A. Charles Knipp—

Q. That was who? A. My father. Walter Knipp, my uncle, Frank Knipp, my uncle, and Roger Knipp, my brother.

Q. Your brother died? A. He died in 1923.

Q. These people, these same people, except for Roger, remained partners of the firm until June, 1930, the date of your uncle Walter's death? A. That is right.

33 Q. When did your father—

Mr. Waring: Your Honor, please, just a minute. The partnership agreement which we have in evidence in this case stems from an agreement dated July 7, 1943. There were about four partnerships prior to that date, which neither this Court nor the Respondent are interested in. We are interested in a partnership starting on the 7th day of July of 1943.

In other words, this case is complicated enough without going back into the history.

The Court: What reason does Counsel have for going behind that partnership agreement?

Miss Agger: This partnership agreement of July 7, 1943 contains the provision which is central to this case and to Mr. Howard's personal income tax case, with reference to the rights of a decedent partner. The decedent partner

under the agreement is not entitled to any portion of the earnings of the partnership up to the date of death.

This is a provision which is of great importance now in this estate tax matter and Mr. Howard's personal matter. It is not a new provision in this business unit. If you wish to call it a separate partnership you may. This is a very old provision which goes back many years.

I think we are entitled to show this is a bona fide business provision of his earlier agreements and of his present agreement; that the history of this is important in that respect.

The Court: In other words, you are now undertaking to interrogate the witness with reference to prior partnerships out of which this was an outgrowth. Is that your position?

Miss Agger: That is my position, which partnerships were operated under the same terms. Settlements were made.

The Court: It looks like we may be going pretty far afield.

It may help to hear the meaning of this partnership, construing that partnership is going to largely control the main issue in this case.

I believe I am right on that?

Mr. Waring: That is correct, but that is the agreement in evidence as Exhibit 4-D, and speaks for itself. The prior partnerships were composed of different entities, that is, different individuals than those here. What the prior individuals wanted to do is not controlling, and has no bearing.

The Court: The Court is inclined to agree with the statement you have made, but yet in construing a document, the intention of the parties has to be ascertained.

I am going to admit this testimony with the understanding that the Court does not thereby agree that he is going to give it any weight when he goes to pass on the issue.

You may ask the question.

Miss Agger: Thank you, your Honor.

By Miss Agger:

Q. I believe you testified that your father, Charles Knipp, died in 1933? A. Yes, I did.

Q. With regard to this partnership agreement— A. Excuse me, did you say December of 1933?

Q. I did not state the month. A. I see.

Q. What month did he die? A. December, 1933.

Q. When you and John and Frank were entering into the agreement of July 7, 1943, did you discuss with your Counsel or among yourselves the provision which is central to this issue, the arrangement with regard to the capital account as of the beginning of the taxable year? A. To an extent. Of course we understood that it had always been in the agreements.

Q. When you say it had always been the agreement, what do you have reference to? A. Way back as far as 1918, the agreement of 1918.

Q. These agreements contained a similar provision? A. Yes, they did.

Q. Will you tell us what was your understanding of the reason for your putting this in your partnership agreement of 1943, this provision? A. It was put in there,
36 as a matter of convenience, so that at the death of a partner, it wasn't necessary to close the books of the partnership. It wasn't necessary to take stock. It wasn't necessary to compute our costs. It was merely a matter of convenience.

Q. When you say "take stock," what do you mean by that? A. To physically take inventory.

Q. Did the partners have the right to receive a drawing account which is referred to as a salary, during the year? A. Yes, he did.

Q. In the event of a partner's death during the year, did the amount drawn as salary affect his capital account as of the beginning of the year? A. No, it did not.

Q. Going back to the date of your father's death in 1933, were you an executor of your father's estate? A. I was one of the executors of my father's estate.

Q. I have here a copy—this is the retained copy of the partnership return for the period ending January 31, 1934. This is the year in which your father's death fell, your father, Charles, died in 1933. Is that correct? A. That is correct.

Miss Agger: Will you please mark this as Exhibit?

The Clerk: Petitioner's exhibit 49 for Identification.

37

(The document referred to was marked Petitioner's Exhibit 49, for Identification.)

By Miss Agger:

Q. Will you look at Petitioner's Exhibit 49 for Identification, and tell me what that is? A. That is partnership return of income for fiscal year 1934, beginning February 1, 1933, ending January 31, 1934.

Q. You were a partner of that partnership? A. Yes, I was.

Q. Is this a correct copy of the partnership return? A. Yes, it is.

The Court: Has the partnership always been on fiscal year basis ending January 31?

The Witness: Yes, sir.

By Miss Agger:

Q. Will you look at this petitioner's Exhibit 49 for Identification, and tell me what amount is shown as distributable to your father, Charles J. Knipp?

Mr. Waring: I object. Please offer the document, so I can object to its receipt in evidence.

Miss Agger: I will be glad to. I will offer the document.

The Court: All right. The document will be received in evidence.

The document will be received.—

38

Mr. Waring: Your Honor, please. I want to object to receipt in evidence. As I stated before, the partnership agreement we have, as stated, is dated July

7, 1943. This is a return that goes back approximately ten years prior to the date of this partnership, which we are now discussing. I don't see any relevancy or any pertinence to this.

The Court: The Court's position with reference to this, is the same as the other question a moment ago. It is permitting the testimony to be offered without agreeing that it might be given, what the intent might be involved, and we sometimes go pretty far in the latitude in the permitting of evidence.

I will overrule.

(The document marked Petitioner's Exhibit 49 for Identification, was received in evidence.)

By Miss Agger:

Q. Mr. Howard, will you tell us what this return shows?

The Clerk: Exhibit 49.

The Court: What exhibit number is this?

The Clerk: Exhibit 49 received.

By Miss Agger:

Q. What is shown as distributable to your father in that year? A. Profit of $4,240.

Q. What does that represent? A. That represents his salary up to time of his death.

Q. In regard to other partners as of that time, Frank H. Knipp, Howard F. Knipp, John C. Knipp, what does it show? A. Frank H. Knipp had loss of $601.18. Howard F. Knipp, $400.79. John C. Knipp had loss of $400.79.

Q. Your father had no loss of income? A. No.

Miss Agger: May I have leave to substitute a photostatic copy?

The Court: Yes, that permission will be granted to substitute a photostat.

By Miss Agger:

Q. Prior to your father's death, who was the next partner who died; when did your Uncle Walter die? A. He died June 12, 1924.

Miss Agger: Will you kindly mark this for identification?

The Clerk: Petitioner's Exhibit 50 for Identification.

(The document referred to was marked Petitioner's Exhibit 50 for Identification.)

By Miss Agger:

Q. When did you say? A. I thought it was 1924. I could be wrong.

40 Q. I will refresh your recollection. Will you look at Petitioner's Exhibit 50 for Identification, tell me when you think he died? A. I am sorry. It was 1930.

The Court: Instead of 1924?

The Witness: Instead of 1924, yes.

By Miss Agger:

Q. Will you tell us what the Petitioner's Exhibit for Identification is? A. This is receipt from the Executors of the estate of Walter Knipp from John C. Knipp and Sons, a partnership, acknowledging receipt of Walter Knipp's, deceased, capital account as of the time of his death.

Q. It is signed by the partnership, John C. Knipp and Sons, by whom? A. Charles J. Knipp and Frank H. Knipp.

Q. That is the signature of your father? A. Yes, it is.

Q. You recognize it as such? A. Yes, I do.

Q. And your Uncle Frank? A. That is true.

Q. It is also signed by Anna H. Knipp. Who was Anna H. Knipp? A. That was my Uncle Walter's

41 wife.

Q. Enoch Harland? A. He was Executor of Walter F.'s estate.

Miss Agger: I offer this in evidence.

Mr. Waring: I object.

The Court: The same ruling. The document will be received as Exhibit Number 50. Leave is granted to substitute photostat.

(The document marked Petitioner's Exhibit 50 for Identification, was received in evidence.)

By Miss Agger:

Q. Mr. Howard, you were the Executor of Frank Knipp's estate? A. That is true.

Q. Did Frank Knipp receive a salary from John C. Knipp and Sons during the year 1947, up until the date of his death? A. Yes, he did.

Q. Did this salary amount to $20,700 in 1947? A. That is correct.

Q. Did you, as Executor, file an income tax return for your uncle's estate? A. Yes, I did.

Q. This salary of $20,700, is the same salary which is involved in the related income tax matter of your Uncle's estate? A. Yes.

42 Q. Was tax paid upon this salary for the year 1948? A. Yes, it was.

Miss Agger: May I ask this check be marked for Identification?

The Clerk: Exhibit 51, for Identification.

(The document referred to was marked Petitioner's Exhibit 51 for Identification.)

By Miss Agger:

Q. I show you Petitioner's Exhibit 51 for Identification, and ask you what it is? A. That is a check made payable to the Collector of Internal Revenue on the Baltimore National Bank, for $8,881.70, representing the tax on this salary, and signed by the partnership.

Q. Signed by you? A. That is right.

Miss Agger: I offer this check in evidence, ask that I may put in the photostatic copy.

The Court: The check will be received in evidence, as Petitioner's Exhibit 51. Permission to substitute.

Mr Waring: No objection to that.

(The document marked Petitioner's Exhibit 51 for Identification, was received in evidence.)

By Miss Agger:

Q. Did the estate take any deduction for making
43 the return for this tax payment? A. No, they did not.

Q. I show you—I am referring now to Exhibit 28, which is the final settlement agreement between John C. Knipp and Sons, and the Maritime Commission with respect to the war termination claims. Will you look at the article four, page four, of that exhibit? This is a copy of the exhibit. A. Yes, sir.

Q. Do you see a reference in Article 4 to a payment of $185,000? A. That is correct.

Q. What is the $185,500—I should correct that, $185,500, refer to? A. It is overpayment to a termination claim.

Mr. Waring: By who?

The Witness: By the Maritime Commission on a termination claim, from John C. Knipp and Sons.

By Miss Agger:

Q. In other words, the Maritime Commission had overpaid the partnership? A. That is correct.

Q. Was the over-payment returned by the partnership? A. Yes, it was.

Q. Will you look at this book and refresh your recollection and tell me when the partnership received this
44 over-payment from the Maritime Commission? A. That is on April 20, 1946 this money was received.

Q. You say that the partnership repaid the Maritime Commission? A. Yes, it did.

Q. Would you like to refresh your recollection by looking at this book and tell me when the repayment was made?

Mr. Waring: And how much.

By Miss Agger:

Q. And how much. A. On September 25, 1947 there was a payment of $50,000.

Q. On what bank was that? A. That was on the Fidelity Trust Company, by John C. Knipp and Sons.

On the same day, there was a check paid of $50,000 on the Baltimore National Bank by John C. Knipp and Sons, of $50,000.

The Court: To whom was that check payable? A. To the United States Treasury.

By Miss Agger:

Q. The Treasurer of the United States? A. Treasurer of the United States.

On October 10, there was a check paid of $55,500, drawn by John C. Knipp and Sons on the Fidelity Trust Company, made payable to the Treasurer of the United States; on the same day there was a check paid of $30,000 drawn on the Baltimore National Bank by the John C. Knipp and Sons, payable to the Treasury of the United States, making a total of $185,500.

The Court: Those were all in payment of those items?

The Witness: Yes.

By Miss Agger:

Q. Will you turn your attention to Article 4 of the final settlement agreement, Petitioner's Exhibit 28? Is there any provision there for the payment of interest on this $185,500, by John C. Knipp and Sons? A. Yes. Under Article 4, Paragraph D, it mentions the payment must include $16,005.25 as interest on partial payments.

Q. The interest is to cover what period? A. From the time that we had gotten money, until the time it was returned.

Q. That would be from April 20, 1946 to September and October, 1947? A. That is right.

Q. The amount of the interest is $16,005.25? A. That is correct.

Q. Was any portion of this interest attributable to
46 the fiscal year ending January 31, 1947? A. Yes, it was.

Q. Do you know what portion of the interest is attributable to the fiscal year ending January 31, 1947?

I will refresh your recollection. A. It was the sum of $8,656.67, applicable to 1-31-47.

Q. Was any part of this $8,656.67 charged to Frank's capital account as of February 1, 1947? A. Yes, it was.

Q. What part? A. A half.

Q. I show you the exhibit to the original stipulation, 7-G, which is Frank's capital account. Will you look at that transcript of Frank's capital account and tell me how much of this interest payment was charged to his account as of January 31, 1947? A. The amount charged to his account was $4,328.34.

Q. Some of this interest paid to the Maritime Commission was attributable to the fiscal year ended January 31, 1948. Is that correct? A. That is correct.

Q. Will you tell us how much of that interest was chargeable to 1948? A. The amount was $7,348.58.

Q. Was any of that interest charged to Frank's
47 account? A. No, it was not.

Q. Was that full interest payment of $7,348.58 charged to your personal account? A. That is correct.

Q. I show you Exhibit 8-H, attached to the original stipulation. Do you see the charge of that sum to your account? A. Yes, I do.

Q. Will you just read that across there? A. U. S. Maritime Commission Claim up to 1-31-48, $7,348.58.

Mr. Waring: What is the date of that entry?

Miss Agger: That is as of January 31, 1951. It is on page 2 of Exhibit 8-H.

By Miss Agger:

Q. In making the estate tax return for Frank's estate, was the value of the partnership interest reduced by the

$4,328.34 interest paid to the Maritime Commission? A. No, it was not.

Miss Agger: I think that is all for now, Mr. Knipp.

Cross-Examination

By Mr. Waring:

Q. Mr. Knipp, I refer you to Exhibit 48 attached to the Stipulation of Facts, which is a photostat copy of insurance policy issued by the Fidelity Mutual Life Insurance Company—

48 Miss Agger: Is that the right number?

Mr. Waring: 45-MM. I am sorry.

To which an affidavit is attached, and ask you if that is a photostat of your signature?

The Witness: Yes, sir.

By Mr. Waring:

Q. That affidavit says, I am quoting, "That I am the surviving member of the firm of John C. Knipp and Sons."

Miss Agger: May I ask what this has to do with the estate tax matter? Is this directed to the estate tax matter?

Mr. Waring: No, this is directed to the income tax matter. I haven't gotten to the estate tax issue yet.

Miss Agger: Are we to go into the income tax matter at this hearing?

Mr. Waring: It was my understanding that all three dockets are open.

Miss Agger: I believe that is correct. I have no objection to you asking the question. I wanted to be certain. We had hoped to limit this hearing.

I may say, we have already filed our brief, you know, in the income tax matter. We are somewhat at a disadvantage if we are going to agree to re-open it.

The Court: The Court has no independent recollection. I have to depend on Counsel as to that.

49 Miss Agger: No, there was—

The Court: If your brief doesn't cover that phase, you will be permitted to amend it.

Miss Agger: We will be permitted to file supplemental brief?

The Court: Yes, the Court will grant you that right now.

Mr. Waring: This affidavit which I have been referring to says: "* * * I am the surviving member of the firm of John C. Knipp and Sons, which original partnership consisted of Frank H. Knipp, Howard F. Knipp and John C. Knipp; that on August 1, 1945, John C. Knipp ceased to be a member of the firm of John C. Knipp and Sons; that on November 21, 1947, the said Frank H. Knipp departed this life, and Howard F. Knipp is the sole surviving member of the firm."

By Mr. Waring:

Q. Is the statement contained in that affidavit true?

Miss Agger: I object to that question, your Honor. The statement speaks for itself.

The Court: I should think so.

Mr. Waring: Mr. Howard Knipp signed this. That was one of the issues in this case.

The Court: What was the question asked?

Mr. Waring: I read a part of his affidavit. All I asked him was whether the statement contained in the affidavit was true.

The Court: I assume the statement you made was true?

The Witness: It would be true, with some explanation.

The Court: You mean that it might be qualified?

The Witness: I would like to qualify it.

Mr. Waring: I object to any qualification. I asked him a statement, whether it was true.

The Court: If you opened up the gate on that, he is entitled to answer.

The Witness: I say it is true, with qualifications which I would like to give.

The Court: If he hadn't been asked that question, the Court would have assumed that it was literally true. If you question the truthfulness of it, I think the witness should be permitted to testify.

Mr. Waring: He has made the affidavit. All I asked him—

The Court: I understand that.

Mr. Waring: He has answered as far as I am concerned.

The Court: All right. He is through.

Miss Agger: May I ask Mr. Knipp be permitted to state what the qualifications were?

51 The Court: You may examine him when you get to that.

Mr. Waring: I refer you now, Mr. Knipp, to Exhibit 13, attached to the Stipulation of Facts, which says, "This agreement made this 1st day of February, 1948, by and between Howard F. Knipp, surviving partner of the firm of John C. Knipp and Sons, and as Executor of the estate of Frank H. Knipp, a deceased partner, * *—

Miss Agger: What is?

Mr. Waring: Two stars, quote again—"Therefore, the said Howard H. Knipp has caused to be formed a corporation under the laws of the State of Maryland, under the firm name of Knipp and Company, Incorporated as the successor to John C. Knipp and Sons, and has agreed as surviving partner of said corporation as follows:".

By Mr. Waring:

Q. The statements that I have read are contained in that exhibit which was signed by you. They are true, are they not, and correct? A. I answer that the same way as I do on the insurance.

Q. All right.

Miss Agger: Your Honor, I don't know what the whole purpose of this examination is. But if it is to suggest that after Frank's death, Mr. Knipp was the sole surviving partner, we have never denied that he was the sole

52 surviving partner. Our statement has only been that John Knipp had a continuing interest in such contracts as were in the firm at the date of his withdrawal in August, 1945, and that his capital account has not been settled.

We have never contended that he was a partner subsequent to the date of August, 1945, in any technical sense, and we do not now so contend.

Mr. Waring: The reason I asked about those documents, sir, is that the record is very ambiguous as far as the Respondent is concerned as to just what the intention was. Respondent has contended that John C. Knipp withdrew from the partnership under agreement of August, 1945; from that time on, he had no interest whatsoever in a business known as John C. Knipp and Sons, except that he was entitled to an accounting for uncompleted contracts with the United States Government, which had been entered into prior to that date, and he was subject to renegotiation.

The agreement speaks for itself.

There has been a lot of evidence put in here to show that there is no accounting made with John, and that from a legal standpoint, perhaps he was still a partner. I just don't know what their position is.

Those documents are self serving by this witness, Howard, whose income tax is affected. I have gone into the two statements made by him, where he says he is 53. the sole surviving partner.

I would like to go on. You can cross-examine him later, please.

By Mr. Waring:

Q. You spoke about the payment of premiums, by the partnership on the insurance policies. I want to ask you if you can state from memory how those insurance premiums were paid? Were they paid prior to distribution to the partners, that is, to their capital or withdrawal accounts, or were they paid afterwards? A. They were paid as any other bills, within thirty days after the premium notice was received.

Q. How was the accounting made to the individual partner with respect to premiums paid on [illegible]ely insurance on your life, Howard, and on the life of Frank? How-

was the accounting made to you? How was the accounting made to Frank, insofar as the partnership records are concerned?

Miss Agger: Your Honor, I think this matter is all covered by the stipulation. I don't object at all to this line of questioning except I think it is repetitive. It is stipulated in Paragraph 4, of the Stipulation that has just been filed as to just how this was accounted for.

The Court: What does it say?

Miss Agger: It says, "The ledger accounts of John C. Knipp and Sons partnership, including the capital
54 and drawing accounts of Frank H. Knipp, Howard Knipp and John C. Knipp, discloses that these drawing accounts and capital accounts were not charged with the insurance premiums paid on the policies referred to in Paragraph 2 of this additional stipulation of fact, but in computing the net distributable earnings of the partnership, John C. Knipp and Sons per book for each year, the premiums on these policies were deducted from earned income (but not from distributable income for Federal tax purposes) and this net income after deducting the premiums on said policies was divided as follows:"

Thereafter there is a list showing the percentage of partnership interest in the several years.

The Court: It would seem that from the first portion of that document you read, that the question there, the effect has been stipulated.

I sustain the objection.

Mr. Waring: All right.

No further questions.

The Court: Anything further?

Redirect Examination

By Miss Agger:

Q. I would just like to ask Mr. Knipp the qualifications he wished to make when he said with regard to the affidavit attached to Exhibit 45-MM, that it was a true statement,

but he had two qualifications he would like to make.

55 A. It has always been my understanding that until final settlement was made with John Knipp and estate of Frank H. Knipp, that John Knipp, as to the complete settlement of the account in accordance with the separate agreement which was made, and Frank Knipp as to the complete settlement of all fax matters, renegotiation matters, etc., that they had an interest, or were affected in the firm of John C. Knipp and Sons.

Q. With regard to John C. Knipp, did you think he had an interest? A. With regard to those contracts which were in effect at the date of his withdrawal from active participation in August, 1945? That is correct.

Q. Did you also think that until his capital account is settled, that he had some continuing interest? A. In these contracts; that is correct.

Q. But you did not regard him as a partner? A. No.

Miss Agger: I think that is all.

Mr. Waring: No further questions.

The Court: Stand aside.

(Witness excused.)

Miss Agger: I have no further witnesses: I wonder if we could take a five minute recess?

The Court: Yes, we will take a ten minute recess.

56 (Whereupon, a short recess was taken.)

The Court: Petitioner rests. Does the Respondent want to offer any testimony?

Mr. Waring: Yes. I will call John C. Knipp.

Whereupon,

John C. Knipp

was called as a witness by and on behalf of the Respondent, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Waring:

Q. Mr. Knipp, you were a member of a partnership known as John C. Knipp and Sons, which was entered into on the 7th day of July, 1943? A. I was.

Q. You are the John C. Knipp that filed a bill of complaint against Frank H. Knipp and Howard F. Knipp in the Circuit Court of Baltimore County? A. I did.

Q. Asking for an accounting? A. I did.

Q. That exhibit I am talking about is Exhibit 5-E. An agreement was entered into by you with your brother, Frank, and your brother Howard, and your Uncle Frank, as a result of that suit. Is that correct, sir?

57 A. That is right.

Q. I show you Exhibit 6-F, attached to the Stipulation of Facts, which is a memorandum of agreement of settlement. In Paragraph 3 thereof, it states, "John C. Knipp shall share in all profits and bear his share of all losses from all contracts of John C. Knipp and Sons outstanding, and existing, as of August 1, 1945, whether completed, re-negotiated, subject to renegotiation, or in the course of re-negotiation, or uncompleted. His share of the profits therein, or losses therein, shall be determined as and when the said contracts are fully completed, renegotiated or cancelled by the United States Government.

"The said share of John C. Knipp in the profits and in the losses of all of said contracts is twenty per cent * * * *."

You understand the portion I read, that was in the agreement? A. Absolutely right.

Q. I had served upon you, sir, a subpoena duces tecum for the production of all accounts or accounting records or statements of account of the business known as John C.

Knipp and Sons for any period which you might have received, subsequent to the date of your withdrawal in August of 1945, from that time.

Do you have in your possession, sir, any of those
58 financial statements? A. Yes, sir.

Q. Which ones do you have? A. I have 1945, 1946.

Q. Those financial statements are already in evidence; isn't that right? Would you please get those two financial statements, sir?

The Court: Do I understand these exhibits are already in evidence?

Mr. Waring: Your Honor please, these exhibits are already in evidence, as Exhibits 24-X and 25-Y. Therefore, I will not need these exhibits that I have just asked the witness about.

By Mr. Waring:

Q. My next question to you, have you received any other financial statements from the business known as Frank C. Knipp and Sons, subsequent to the audit statement you have referred to? A. John C. I have no more financial statements. I have this other, dated August 14, 1951—August 14.

The Court: That was the bill of complaint?

The Witness: I have that.

Miss Agger: What is that?

Mr. Waring: This is not a bill of complaint. It is a copy of a protest we are not interested in at all.

59 By Mr. Waring:

Q. To my question, you have seen no other financial accounting from the business known as Howard Knipp, or the John C. Knipp and Sons? A. That is right.

Q. Have you ever been furnished with a copy, or photostat copy of your capital account? A. Yes, sir.

Q. As shown on the books and records of John C. Knipp and Sons, Partnership, subsequent to the financial state-

ment which you have, that ends with the period of January 31, 1946? A. Only the April, 1954, April 30, 1954.

Q. And no other accounting? A. No other accounting.

Q. No other accounting was made? A. That is right.

Q. Did you demand an accounting during this period? A. For three or four years I did.

Q. I show you a photostat of the statement you just mentioned, the accounting. The date is what? A. It was sent me April 30, 1954.

Q. This is a photostat of that document? A. A photostatic copy.

Miss Agger: What is it a photostatic copy of?

60 Mr. Waring: The financial statement furnished by Howard Knipp, to John C. Knipp, with respect to his interest in the business known as John C. Knipp and Sons.

By Mr. Waring:

Q. Is that a correct statement? A. That is a correct statement.

Mr. Waring: I offer in evidence as Respondent's Exhibit RR, this document.

Miss Agger: Your Honor, may I ask what the purpose of this is?

Mr. Waring: The purpose of that is to show that this witness—I am anticipating his testimony—will testify that he has received no income of any nature from this business subsequent to the date of his withdrawal. There has been nothing but debts accumulating out of the air, by our friend Howard against him.

Miss Agger: What is the relevance of that? Suppose it were true, which it is not.

Mr. Waring: The evidence of that is to rebut the testimony that has been made, that he is still a partner in this business from an accounting standpoint.

Miss Agger: The testimony has been that he is not a partner.

I object to that document. It is repetitive to a very considerable degree of the capital account which is already in evidence as Exhibit 9-I, attached to the stipulation, and it is a much later date. It is completely irrelevant as to whether Howard and John have some controversy. Possibly they do.

The Court: The Court, following its well known rule of liberality in the testimony, will admit it.

(The document referred to was marked Respondent's Exhibit RR, and received in evidence.)

By Mr. Waring:

Q. Now, Mr. John Knipp, have you ever received any money other than a liquidation of your capital account? Have you ever received any earned income?

Just a minute. From the business known as John C. Knipp and Sons, subsequent to the date you withdrew from the partnership in 1945? A. I received, I have received some income.

Q. What do you mean by "some income?" State how much, when you received it? A. In September 25, not from here, but in September 25, 1952, our business had at Pulaski Street, the main plant, and Brooklyn, the other plant. We leased the building with an option to sell on Pulaski Street to the Sanger people, it is the Northkool people. It is their main office.

I entered into the lease with my brother with my twenty per cent and his eighty per cent, he having inherited forty per cent from Frank Knipp. I have the lease here.

And while there were the improvements we put on the building, left very little rent the first year. I received some the second year, and it was treated in that statement of my capital account, as capital withdrawals. And I was told by Mr. Chenowith, the Accountant for the firm, that they were going to start to report it this year, 1954, because of the way the thing was being handled. It was to be reported as income in 1954, and not in 1953.

[PETITIONER'S Exhibit 51] p. 249

CHECK IS IN PAYMENT OF FOLLOWING ITEMS

DATE	AMOUNT
Balance 1948	
Last Estate of	
Frank H. Knipp	

CORRECT ENDORSEMENT IS RECEIPT

JOHN C. KNIPP & SONS

MARINE INTERIORS — MILLWORK

600 S. PULASKI ST.

BALTIMORE, MD.

No. 2487

3550404

Feb 24, 1949

PAY TO THE ORDER OF Collector of Internal Revenue $ 8881.70

KNIPP 8881 AND 70 CTS DOLLARS

SPECIAL ACCOUNT 00031

JOHN C. KNIPP & SONS

Howard F. Knipp

Franklin Knipp

BALTIMORE NATIONAL BANK

7-16 BALTIMORE, MD.

COLL. INT. REV. DIST. OF MD. N.P. 7-27

Respondent's Exhibit RR

SEMMES, BOWEN & SEMMES
10 Light Street
Baltimore 2, Maryland

May 28, 1954

Mr. John Chenowith
Knipp and Company
3401 South Hanover Street
Baltimore 2, Maryland

Dear Mr. Chenowith:

Enclosed herewith you will find copy of memorandum which I have prepared from the figures you gave me showing the present status of the account of John C. Knipp. You will note there is a deficit of $51,892.17.

I wish you would check these figures to let me know if you consider any changes necessary.

I believe it might be desirable to add one more paragraph saying somewhat as follows.

"Attention is directed to the fact that the figures appearing at the top of page 2 and totaling $39,230.14 actually all involve not only adjustments made January 31, 1948 but as of 1942, 1943, 1944 and 1945. In theory these items should be deducted from the capital account as it stood January 31, 1945. That would mean that as of January 31, 1946 the capital account was only $64,950.09 and hence was overdrawn by January 31, 1947 by $13,671.91.

"By the terms of the agreement the determination of John C. Knipp's share in the partnership was to be determined as of August 1, 1945. It was agreed that his salary was to be continued and paid through January 31, 1946. Inasmuch as there was a deficit by January 31, 1947 interest could only accrue from August 1, 1945 to January 31, 1947 or for 18 months. Inasmuch as he received his share of the profit for the entire year ending January 31,

1946 interest should really be calculated for the one year January 31, 1946 to January 31, 1947 on an amount ranging from a maximum of $64,950.09 to a minimum of minus $13,671.91 or on an average of approximately $25,000.00 so that interest at 6% for one year would be $1,500.00. On the other hand since January 31, 1947 the deficit has run from $13,000.00 to $51,000.00—an average of approximately $29,000.00 for 7 years on which interest at 6% would total $12,180.00."

Perhaps you would suggest the pulling some of the figures out of one place and putting them in another, or perhaps you might wish to suggest some change in the proposed additional paragraphs.

In any event will you please let me have your comments.

Very truly yours,

/s/ BRADLEY T. J. METTEE, JR.

BTJM:DW
Enc.

MEMORANDUM

By the Statement of J. E. O. Feller and Son dated January 31, 1945, it appears that the capital of the partnership was $855,709.34 of which the partners shares were as follows:

Frank H. Knipp	$338,898.09
Howard F. Knipp	334,189.02
John C. Knipp	182,622.23
	$855,709.34

Starting with the figure so shown as the capital of Mr. John C. Knipp the following shows the credits to the account and charges against the account down to May of 1954.

Capital Account January 31, 1945 of John C. Knipp			$182,622.23
John C. Knipp share of profit for the year ended 1-31-46—			
On contracts		$93,142.16	
Withdrawals by John C. Knipp 2-1-45 to 1-31-46	$171,584.16		
Net debit or withdrawal in excess of income for year	78,442.00		78,442.00
	93,142.16		
Balance of capital account 1-31-46			$104,180.23
Withdrawal by John C. Knipp 2-1-46 to 1-31-47	79,022.00		79,022.00
			25,158.23
January 31, 1947 balance of profit for the year 1942—credit adjustment	400.00		400.00
Balance of capital account January 1, 1947			25,558.23
Withdrawal by John C. Knipp February 1, 1947 to January 31, 1948	5,079.80		
Refund of duplicate hospitalization payment	16.00		
	5,063.80		
January 31, 1948—audit adjustment credit	4,066.54		
	997.26		997.26
			$24,560.97
Total Brought Forward			$24,560.97

Adjustments 1-31-1948—by audits—renegotiation, etc.			
1-31-1942—personal items	192.00		
sales adjustment—Knipp furniture	100.00		
1-31-1945—Personal work	4.50		
1-31-1943-1944—charge back bonus bonds	225.00		
1-31-1945—auto depreciation adjustment	64.75		
1-31-1941—audit adjustment	858.26		
1-31-1942—audit adjustment	1,213.20		
1-31-1943-1945—audit adjustment	34,547.43		
	39,230.14		39,230.14
Balance of capital account (debit balance) 1-31-1948			*14,669.17
2-9-1949—State of Alabama—Tax penalty and interest	1.76		1.76
			*14,670.93
Cash advance—12-30-1950		1,000.00	
1-31-1951—additional on U.S. Maritime Commission termination claim 1-31-1946		320.38	
			1,320.38
			*15,991.31
4-6-1951 Cash advance		1,000.00	
6-11-1951 Cash advance		2,000.00	
8-10-1951 cash advance		3,000.00	
11-24-1951 Cash advance	2,000.00	....	
12-16-1951 Cash returned	2,000.00	....	6,000.00
			*21,991.31
1-20-1953 Cash advanced		1,500.00	
7-7-1953 Cash advanced		2,000.00	3,500.00
			*25,491.31

* Denotes Red Figures.

5-5-1954—audit adjustments—journal entries Bald 1-31-1946	40.00	
5-5-1954—audit adjustments—journal entries Bald 1-31-1946 (to adjust for legal expenses allowed in prior years)	3,317.51	
5-5-1954—disallowed mtge. interest 1-31-1946	715.67	4,073.18
		*29,564.49
5-5-1954—adjustment—Bald—Sale of Clay Street property—Credit		.04
		*29,564.45
Total Brought forward		*29,564.45
2-2-1954 Cash advanced	$ 350.00	
3-1-1954 Cash advanced	1,050.00	
5-6-1954 Cash advanced	325.00	
	1,725.00	
4-27-1954—Cash advanced—Internal Revenue for Income Tax	20,602.72	
		22,327.72
		*51,892.17

The above calculations are based on capital which values certain fixed assets at $119,087.72. These items are as follows:

	Cost	Depreciation	Book Value
Land—Factory site	9,618.35		9,618.35
Building—Clay Street	22,167.06	11,830.24	10,336.82
Factory Buildings	174,759.16	83,753.49	91,005.67
Machinery and Equipment	40,294.96	40,194.96	100.00
Delivery Equipment	10,513.26	5,092.62	5,420.64
Furniture and Fixtures	6,262.76	3,656.52	2,606.24
	263,615.55	144,527.83	119,087.72

* Denotes Red Figures.

Assuming for purposes of discussion that the Machinery and Equipment should be valued at a figure greatly in excess of book value as of January 31, 1945. If it were

valued at $20,100.00 the deficit shown would be reduced by 20% thereof or $4,000.00.

The two items—Land—Factory Site of $9,618.35 and the Factory Buildings—the buildings on Pulaski Street—of $91,005.67 total approximately $100,000.00. If this value were increased as of January 14, 1945 to $200,000.00 20% of the additional $100,000.00 or $20,000.00 would be credited against the deficit leaving it at $31,000.00. If additions for both machinery and equipment and Pulaski Street were credited against the deficit it would still be in excess of $27,000.00.

Attention is directed to the fact that the figures appearing at the top of page 2 and totaling $39,230.14 actually all involved not only adjustments made January 31, 1948 but as of 1942, 1943, 1944 and 1945. In theory these items should be deducted from the capital account as it stood January 31, 1945. That would mean that as of January 31, 1946 the capital account was only $64,950.09 and hence was overdrawn by January 31, 1947 by $13,671.91.

By the terms of the Agreement the determination of John C. Knipp's share in the partnership was to be determined as of August 1, 1945. It was agreed that his salary was to be continued and paid through January 31, 1946. Inasmuch as there was a deficit by January 31, 1947 interest could only accrue from August 1, 1945 to January 31, 1947 or for 18 months. Inasmuch as he received his share of the profit for the entire year ending January 31, 1946 interest should really be calculated for the one year January 31, 1946 to January 31, 1947 on an amount ranging from a maximum of $64,950.09 to a minimum of minus $13,671.91 or on an average of approximately $25,000.00 so that interest at 6% for the year would be $1,500.00. On the other hand since January 31, 1947 the deficit has run from $13,000.00 to $51,000.00—an average of approximately $29,000.00 for 7 years on which interest at 6% would total approximately $12,180.00.

25 T. C. No. 24

THE TAX COURT OF THE UNITED STATES

ESTATE OF FRANK H. KNIPP, deceased, HOWARD F. KNIPP, Executor, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

HOWARD F. KNIPP, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

Docket Nos. 42545, 50153, 50154.

Filed October 31, 1955.

1. The decedent and petitioner Howard F. Knipp were on the calendar year basis for reporting income, and the partnership, of which they were the sole members with equal rights to share in profits, operated on the basis of a fiscal year ending January 31. The partnership agreement provided, in effect, that if a partner died during a taxable year of the firm his share of the profits would be the amount which he was entitled to receive as "salary". *Held*, that the death of decedent on November 21, 1947, terminated the partnership's taxable year. *Held, further*, that one-half of the partnership's profits to the date of death of the decedent, less the amount withdrawn as "salary" is not includible in the gross estate of the decedent as value of a property interest in the earnings of the partnership.

2. The partnership held 11 policies of insurance on the life of the decedent, 10 of which had been assigned to it by the insured. It was the beneficiary of the unassigned policy but the insured had the right to change the named beneficiary. The partnership paid the premiums on all of the policies. *Held*, that the proceeds of the 10 assigned policies are not includible in gross estate of the decedent

under subsections (A) or (B) of section 811(g), I.R.C. of 1939, and that the proceeds of the unassigned policy are a part of the decedent's gross estate under subsection (B).

Randolph E. Paul, Esq., and *Julian N. Stern, Esq.*, for the petitioners.

Paul Waring, Esq., for the respondent.

These consolidated proceedings involve deficiencies in income and estate tax as follows:

Docket No.	*Petitioner*	*Tax*	*Year*	*Deficiency*
42545	Estate of Frank H. Knipp	Estate		$120,980.52
50154	Estate of Frank H. Knipp	Income	1/1/47 to 11/21/47	18,500.36
50153	Howard F. Knipp	Income	1947	351,892.70

Refunds are claimed in Docket Nos. 42545 and 50154.

The issues not conceded on brief or settled by stipulation are:

Docket Nos. 50153 and 50154.

(1) Whether the death of Frank H. Knipp terminated the partnership for income tax purposes.

Docket No. 42545.

(1) Whether the value of the interest of the decedent in the partnership of John C. Knipp & Sons should include the amount of $154,972.05 representing one-half of the partnership income in 1947 prior to his death on November 21, 1947;

(2) Whether the proceeds of certain insurance policies on the life of decedent, totaling $90,512.32, are includible in his gross estate; and

(3) Whether the value of the decedent's interest in the partnership should be reduced by the amount of $4,328.34 as his share of the partnership liability to the United States Maritime Commission for interest as of January 31, 1947.

Findings of Fact.

The facts set forth in the stipulation of facts are so found.

Howard F. Knipp, the petitioner in Docket No. 50153, hereinafter referred to as "Howard", is the executor of the estate of Frank H. Knipp, deceased, his uncle, hereinafter referred to as "Frank", who died testate on November 21, 1947. Howard kept his books and filed his income tax returns for 1947 and 1948 on the calendar year basis. His income tax returns and the estate tax return were filed with the collector of internal revenue for the district of Maryland.

The firm of John C. Knipp & Sons has been engaged in the retail furniture, interior woodwork, and ship-fitting business since 1868. On July 7, 1943, Frank, Howard and John C. Knipp, a brother of Howard, hereinafter referred to as "John", entered into a partnership agreement for the conduct of the firm, hereinafter referred to for convenience as the partnership. Profits and losses of the partnership were to be shared on the basis of 40 per cent to Frank and Howard, and 20 per cent to John. An annual salary of $25,000 each was to be paid to Frank and Howard and $15,000 to John, payable on a monthly basis. Paragraph Eleven of the partnership agreement reads as follows:

> *Eleven.* It is agreed among the partners hereto, anything in this agreement to the contrary notwithstanding, that in the event of any partner's death, the amount to the credit of said deceased partner on the firm's books on February 1, 1943, or on February 1st in any subsequent year, provided the partnership has run for twelve consecutive months; otherwise the date of settlement shall be as of the prior February 1st, less

the amount of his withdrawals over salary, shall be paid to the Executors or Administrators of said deceased partner, and same shall be in full settlement of the deceased partner's interest in said partnership.

The purpose of the provisions was business convenience.

The partners had an oral understanding that the capital account of a deceased partner at the start of the fiscal year in which his death occurred would be subject to any adjustments made by the partnership on work completed and reflected in the account.

The agreement did not contain a provision for continuation of the partnership in the event of death of a partner.

Under the partnership agreement Frank had no right to share in partnership earnings for its fiscal year in excess of his contractual drawings unless he survived to the end of the partnership's fiscal year. Similarly, if the partnership income was insufficient to cover the partners' contractual drawings in any year, a partner who died during the year could not be charged with any part of the decrease in net partnership assets and was entitled to his full contractual drawings or "salary."

The partnership kept its books and filed returns on the basis of a fiscal year ending January 31.

John withdrew from the partnership as of August 1, 1945. The settlement agreement entered into with Frank and Howard provided that John's share of profits and losses would be 20 per cent of the profits and losses on contracts outstanding on August 1, 1945, "whether completed, re-negotiated, subject to re-negotiation or in the course of re-negotiation or uncompleted."

On August 1, 1945, the partnership had uncompleted contracts, including contracts with the United States Maritime Commission, hereinafter referred to as "Maritime", for the fitting of ships, which contracts were subject to renegotiation. On October 30, 1947, Maritime filed a claim against the partnership for $322,461 for progress pay-

ments erroneously made for work cancelled on March 8, 1944. The payments were reported in income in the year of receipt. On November 21, 1947, the partnership made a counterclaim for additional amounts due to it for work on ships. The counterclaim was allowed on February 21, 1949, in the amount of $177,733.05 as an offset against the overpayment of $322,461. The balance of $144,727.95 was paid by checks issued in 1949 and 1950 by John C. Knipp & Sons.

After John withdrew from the partnership Frank and Howard continued to operate the business under the partnership agreement of July 7, 1943, except for an oral amendment to provide for an equal division of the profits.

About September 1943 Maritime cancelled further work by the partnership on 10 vessels. Thereafter, the partnership filed a termination claim against Maritime which was still unsettled on November 21, 1947.

In April 1951 "Howard F. Knipp, as partner and as executor of the estate of Frank H. Knipp, deceased partner, and John C. Knipp, as partner, doing business as John C. Knipp & Sons (herein called 'Contractor')" signed a final settlement agreement as of March 6, 1950, with Maritime in respect to a termination claim on the contracts cancelled in 1945. The agreement took into account certain credits to Maritime for supplies which had been taken over by the "Contractor" on the termination of the contracts and progress payments which the "Contractor" had received before the contracts were terminated. In settlement the parties agreed that Maritime had overpaid the "Contractor" by $81,064.09 and that the "Contractor" owed Maritime $16,005.25 for interest on an overpayment made on April 20, 1946, in the amount of $185,500, which overpayment the "Contractor" had repaid in September and October, 1947. The compromise settlement was approved by the Department of Justice on October 1, 1951. Of the agreed liability for interest, $8,656.67 was for the period to

January 31, 1947. Such interest was not claimed as a deduction in the partnership return filed for the year ended January 31, 1947, but was allowed by the respondent as accrued interest in adjusting the net income of the partnership for that period. The amount reported in the estate tax return as the value of Frank's interest in the partnership was not reduced by one-half, or $4,328.34, of such interest of $8,656.67. The capital account of Frank on the books of the partnership was charged as of January 31, 1947, with $4,328.34 for his alleged share of the interest to that date.

On November 21, 1947, the partnership had contracts with Maritime which were subject to profit limitations under the Vinson-Trammel Act. Its work under some of the contracts was completed during the fiscal year ended January 31, 1947. The excessive profits received under the contracts were determined in 1949 or 1950 and were paid by the partnership.

On November 21, 1947, the partnership had unsettled claims for work for Maritime on ships at Savannah, Georgia, and for termination of the contract as to some of the ships covered by it. The contract price was also subject to adjustment for defective work done after that date. Work on contracts incompleted on November 21, 1947, was continued after that date.

The inventory of the partnership was sold for cash, its machinery and building leased, and its pending contracts assigned by Knipp & Company, a corporation organized on February 1, 1948. The corporation completed the contracts so assigned to it. The partnership bank account was continued after February 1, 1948, in which rental income from a building was deposited.

The capital account of Frank on the books of the partnership had a credit balance of $226,320.90 on January 31, 1947, and $221,845.63 on the date of his death on November 21, 1947. Various entries in the account thereafter reduced the balance to $54,875.96 on January 31, 1949.

The will of Frank provided for cash legacies of $137,000, including $50,000 to Howard, who was named residuary legatee. All of the legacies were paid except the one to Howard. The will provided that if the estate was not sufficient to pay all of the legacies in full, the legacies were to abate proportionately.

At the time of his death on November 21, 1947, Frank had 11 insurance policies of the value of $90,521.32 outstanding on his life, all of which, except one issued by the Sun Life Assurance Company of Canada of the value of $5,000, were assigned to John C. Knipp & Sons in or prior to 1931. The policy issued by the Sun Life Assurance Company of Canada was payable to the partnership. It was assigned to the Baltimore National Bank by Frank and the partnership on May 16, 1939. Under the assignment the bank had "all rights as to the cash surrender values, loans, dividends, and all other handling of policy without consent or signature of the insured". The policy was reassigned on July 31, 1945, by the bank to the partnership. The insured had the right to change the beneficiary at any time prior to his assignment of the policy. The cash value of all of the policies was set up on the books of the partnership as assets and the partnership used the policies as collateral for loans.

The partnership paid the premiums on the policies as they became due. The premiums paid on the policies before and after January 10, 1941, were $56,405.36 and $21,073.35, respectively.

The premiums were considered an expense of the partnership and deducted from gross income except for income tax purposes. None of the premiums was charged to the capital or drawing account of the partners. The increase of cash surrender value of the policies each year was considered income of the partnership, except for income tax purposes, and the value of the insurance as an asset of the partnership was correspondingly increased.

The income of the partnership from February 1, 1947, to the death of Frank on November 21, 1947, was $351,344.09. Included in the amount was $18,887.50 for "salary" actually withdrawn by Frank prior to his death, and $1,812.50 to which he was entitled as "salary" at the time of his death.

The return filed by the partnership for the fiscal year ended January 31, 1947, reported ordinary net income of $309,027.21, distributable in equal amounts to Frank and Howard. The return was signed by Howard.

A partnership return was filed for the fiscal year ended January 31, 1948, showing ordinary net income of $450,158.91, distributable, "In accordance with partnership agreement," $429,458.91 to Howard and $20,700 to the estate of Frank. The return was signed by Howard. A partnership return was also filed for the fiscal year ended January 31, 1949, showing ordinary net income of $11,754.33, all distributable to Howard "In accordance with partnership agreement".

The income tax return of Frank for the period January 1, 1947, to November 21, 1947, reported the amount of $154,513.61 as the decedent's distributive share of the income of the partnership for the fiscal year ended January 31, 1947. Fiduciary income tax returns were filed for the estate of Frank for the period November 21, 1947, to December 31, 1947, and for the calendar year 1948. The return for the period in 1947 reported no partnership income. The return for 1948 reported net income of $25,542.37, including $20,700 of income from the partnership, and tax liability of $8,881.70, which was paid. In his determination of the deficiency against Frank for the period ended November 21, 1947, respondent increased taxable income by the amount of $20,700 for "salary" received from the partnership during the taxable period.

Frank's interest in the partnership was included in his estate tax return at a value of $54,875.96. The 11 life insurance policies of the value of $90,512.32 were reported in the return but not included in the gross estate.

The adjustments made by the respondent in determining the deficiency in estate tax included the following amounts as additions to the net estate:

Increase value partnership's interest	$ 52,848.61
Salary owed by partnership	1,812.50
Partnership income to time of death	[1] 184,948.54
Insurance	[2] 90,512.32

[1] The parties now agree that the correct amount is $154,972.05.

[2] Included under section 811(g), I.R.C. of 1939, on the ground that the premiums were paid indirectly by the decedent. The parties stipulated that the value was $90,521.32.

In his return for the calendar year 1948 Howard reported income of $405,646.60 from the partnership for the fiscal year ended January 31, 1948. In his determination of the deficiency against Howard for 1947 respondent held that the death of Frank on November 21, 1947, dissolved the partnership and terminated its accounting year as of that date, and, accordingly, included in his income, in addition to his distributive share of the profits of the partnership for the fiscal year ended January 31, 1947, the amount of $330,644.09 representing all of the income of the partnership for the period from February 1, 1947, to November 21, 1947, less $20,700 distributable to Frank, and the amount of $47,087.35 as income from the operation of the business as a sole proprietorship for the remander of the calendar year 1947.

Opinion.

JOHNSON, *Judge:* Frank and Howard, members of the partnership, reported income on the basis of a calendar year. The partnership's taxable year ended on January 31. Involved in the proceedings relating to income tax is the basic question of whether the death of Frank on November 21, 1947, terminated the partnership and its accounting year for income tax purposes.

Petitioners concede that the death of Frank worked a dissolution of the partnership but, relying primarily on *Heiner* v. *Mellon*, 304 U. S. 271, as to Howard, and distinguishing *Guaranty Trust Co.* v. *Commissioner*, 303 U. S. 493, as to Frank, contend that the firm continued for liquidation purposes without a break in its taxable year until at least January 31, 1948. So arguing, petitioners say that Frank's "salary" [1] of $20,700 and Howard's share of the profits of the business are not taxable until 1948.

Respondent held in his determination of the deficiencies and asserts on brief that the death of Frank terminated the partnership for income tax purposes, with the result that the "salary" of Frank, which the executor of his estate reported as income taxable in 1948, constitutes income taxable for the period January 1, 1947, to November 21, 1947, and that Howard is taxable in 1947 on not only his distributive share of the profits of the partnership to November 21, 1947, but, as sole proprietor, on the earnings of the business for the remainder of the calendar year 1947, contrary to the view of Howard, who included in his return for the calendar year 1948 all of the profits of the partnership for the fiscal year ended January 31, 1948. Respondent says that the *Guaranty Trust Co.* case controls the "salary" question as to Frank, and that that case and paragraph Eleven of the partnership agreement support his position as to Howard.

In *Guaranty Trust Co., supra,* the decedent, who filed his returns on the basis of a calendar year, died on December 16, 1933, while a member of a partnership whose fiscal year ended on July 31. The agreement of copartnership was such that the decedent's death dissolved the partnership, ended his right to share in future profits, and fixed the date for an accounting of earnings by the survivors. Later, the surviving partners formed a new partnership and took over the business as of the time of the decedent's

[1] The partnership agreement classified the amount as salary. For tax purposes the amount constitutes a share of the profits of the business.

death, with a fiscal year ending July 31, 1934, and from year to year thereafter. In January and February 1934, the decedent's executors received the decedent's share of the profits of the firm for the period from August 1, 1933, to December 16, 1933. The executors omitted the profits, so distributed, in the return filed for the decedent for the taxable period ended with his death, and the Commissioner included it in determining the deficiency. No contention was made by the taxpayer that the short period was not a "taxable year" of the partnership within the meaning of section 182(a) of the Revenue Act of 1932, and the Court remarked that if such a contention had been made, it could not have prevailed. The issue before the Court was whether the terms "any taxable year of the partnership ending within his taxable year"[2] appearing in section 182(a), *supra*, precluded inclusion in the income of the decedent for the short period ending with his death, his share of the profits of the partnership for that period, and also the full fiscal year ending on July 31. The Court held that it did not.

In *Heiner* v. *Mellon*, *supra*, one of the three equal partners in two partnerships died in 1919. Liquidation of the business continued thereafter to 1925 when the assets were sold in bulk. No new partnership agreements were entered into by the survivors. The partnership returns filed for 1920 listed the estate of the decedent as a member of the partnerships. The accounting period of the partnerships and the partners was the calendar year. The question was whether the surviving partners were taxable in 1920 on their distributive shares of the partnerships for that year. The Court said that dissolution of the partnerships by the death of one of the partners did not affect the liability of the survivors for tax on their distributive shares of the profits in the following year. It then pointed out that:

[2] A phrase of like import appears in section 188 of the Internal Revenue Code of 1939.

> * * * Although dissolved, the partnerships and the business continued, since, as stated in the Pennsylvania Uniform Partnership Act: "On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed." * * *

The Commissioner recognizes that the death of a partner does not "in itself" terminate a partnership for income tax purposes; that "Ordinarily, a partnership will be treated as continuing where the business of the partnership, or a substantial portion thereof, is continued," and that the returns of the continuing partnership should be filed on the basis previously established. Rev. Rul. 144, 1953-2 C.B. 212, 213. He does not require application of the ruling to changes occurring prior to January 1, 1954. Rev. Rul. 54-26, 1954-1 C.B. 153. In another ruling, Rev. Rul. 54-55, 1954-1 C.B. 153, with like conditions on retroactivity, the Commissioner held that where the estate of a deceased partner continues the decedent's interest during the winding-up period, the partnership continues during that period of liquidation.

Similar questions have been before this Court. In *Mary D. Walsh*, 7 T. C. 205, where there was no provision for continuation of partnership interests, we held that the death in 1939 of one of the three partners did not affect the taxable year of the partnership as to the surviving partners during the liquidation period.

Dissolution and complete liquidation of a partnership, accounting on a fiscal year basis, occurred within the calendar year 1941 of a partner in *Anne Jacobs*, 7 T.C. 1481, and we held that her distributive share of the profits for the fractional taxable year of the partnership was includible in income for 1941. See also *Louis Karsch*, 8 T.C. 1327.

By prior agreement the partnership interest of a deceased partner continued in *Estate of Samuel Hnookin*, 12 T. C. 744, affd. 184 F. 2d 89. There, following *Henderson's Estate v. Commissioner*, 155 F. 2d 310, reversing 4 T. C. 1004, we held that the accounting period of the partner-

ship did not end with the death on December 1, 1943, of a partner and that the decedent's share of the earnings of the business for the period of its fiscal year from June 1, 1943, was not includible in his return for the taxable period January 1, 1943, to December 1, 1943. The case was cited in support of the conclusion reached in *Girard Trust Co.* v. *United States*, 182 F. 2d 921, on facts materially the same.

Estate of Isidore Waldman, 15 T. C. 596; revd. 196 F. 2d 83, involved facts similar to the *Mnookin* case. There, under the partnership agreement, the heirs or estate of a deceased partner could elect within 60 days to continue as a partner. The executor made a timely election but the surviving partners rejected it. Thereafter an agreement was reached under which the partnership was dissolved and liquidated as of January 31, 1946, a date within the partnership's fiscal year ending June 30. We held that the death of the decedent on November 22, 1945, did not end the taxable year of the partnership; that such year continued to January 31, 1946, when the partnership terminated, and that no part of the net income of the partnership for the period July 1 to November 22, 1945, was includible in the final return of the decedent for the period January 1 to November 22, 1945.

In *Estate of Joseph E. Tyree*, 20 T. C. 675, affd. 215 F. 2d 78, like in *Estate of Samuel Mnookin*, *supra*, there was an agreement for continuation of the partnership, and we held, following the *Mnookin* case and this Court's ruling in the *Waldman* case, *supra*,[2] that the death of a partner did not terminate the taxable year of the partnership as to him.

The cases before us here involve both the interest of the deceased partner and the sole surviving partner, without an express agreement for continuing the business and an unusual provision as to profits for the partnership taxable year in which a partner should die. The proceeding involving Frank will first be considered.

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[2] Nonacquiescense withdrawn, 1954-2 C.B. 6.

The partners had a statutory right to select a taxable year for the partnership different from their own, section 188, coupled with a requirement in section 182, *supra*, that their shares of the earnings of the business for the taxable period so selected be included in their individual income tax returns for the taxable year in which the partnership year ended, whether or not distributed. They also had an unrestricted right to agree upon rates of participation in the profits of the enterprise.

The partners here agreed upon withdrawals of profits, designated as salary, at the rate of $25,000 per year for each, payable on a monthly basis. Paragraph Eleven of the partnership agreement expressly provided that upon the death of a partner there should be paid to his estate in full settlement of the decedent's interest the amount to his credit at the beginning of the partnership year, less withdrawals over "salary." The "salary" payable to Frank prior to his death was $20,700, of which $18,887.50 was actually paid to him.

The effect of the agreement of the partners here was to fix the distributive share of a deceased partner in the partnership year in which his death occurred at an amount equal to the "salary" payable to him for the period prior to his death. So limited by express agreement, no right passed from the decedent to his estate to receive any amount for inclusion in a fiduciary income tax return for a subsequent period. See section 126(a)(1)(A), I.R.C. of 1939. The death of Frank eliminated the partnership as a continuing source of income to him as effectively as did the death of the partner in the *Guaranty Trust Co.* case, *supra*.[4] Howard so construed the agreement, as shown by the individual tax return he filed for 1948 in which he reported as taxable to him all of the ordinary net income of the partnership for its full accounting period, less the $20,700 distributable to Frank before his death.

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[4] See comment of the United States Court of Appeals, Commissioner v. Guaranty Trust Co., 89 F. 2d 693.

Frank's death thus not only fixed the date of computation of his distributive share of the profits, but the amount thereof. The amount was earned during Frank's lifetime and no reason appears for delaying the reporting of such income until the end of an additional period, during which operations could not affect the amount of the share.

While there was no controversy in the *Guaranty Trust Co.* case as to the time of termination of the partnership year,[5] the rationale of the decision there, applied to the peculiar factual situation here, requires a conclusion that the partnership's taxable year as to Frank ended on the date of his death. Accordingly, we sustain the respondent on this point of the issue.

The peculiar facts of the case do not require a different conclusion as to Howard, the surviving partner.

The *Mellon* case, *supra*, is clearly distinguishable. There, the interest of the deceased partner continued with a right of his estate to share equally with the two surviving partners in the profits of the business during the liquidation period of about five years after dissolution. That situation did not prevail here.

Petitioners refer us to various provisions of the Uniform Partnership Act, in force in Maryland, which, they say, required liquidation proceedings and, therefore, a continuation of the business with usual tax consequences until the close of the fiscal year, even though only one partner survived.

We agree that some sort of a proceeding or transaction was necessary to bring about a termination of the partnership as a going business. Complete liquidation of the partnership involved in the *Guaranty Trust Co.* case, *supra*, and, therefore, termination of the taxable year, resulted from the transfer of the business, as of the date of death of the decedent, to a new partnership organized by the surviving partners. The means employed here were

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[5] See Girard Trust Co. v. United States, supra; Estate of Isidore Waldman, supra; and Estate of Joseph E. Tyree, supra.

equally as effective to terminate the partnership for income tax purposes as of the date of death of Frank.

The partnership agreement not only gave Howard the right to all profits of the business after the death of Frank, but all of the net income earned prior thereto during the fiscal taxable year selected by the partners, except "salary" distributable to Frank before his death. The agreement was so construed by Howard in reporting partnership income and making return of his and the estate's income, and no contrary contention is being made here by petitioners. The shares of partnership net income to Frank's death were thus determinable under the agreement and continuation of the business was unnecessary to determine distributive shares of partners, since operations could be only for the account of Howard.

Howard was not only entitled to receive all of the net income after Frank's death, but under the partnership agreement concurrently with that event acquired all of the interest of Frank, and with it the assets of the business, for an amount determinable under paragraph Eleven of the instrument. But petitioners point out that Frank's interest was subject to debts of the partnership created while he was a partner. Such obligations would constitute claims against the estate of Frank, and, if allowable, would reduce by a corresponding amount the cost to Howard for Frank's interest. Any rights of creditors against the surviving partner could be pursued against him as the successor of the business.

To conclude, our opinion is that the partnership agreement settled all matters between the partners and terminated the taxable year of the partnership as to Howard at the time of Frank's death. Accordingly, the determination of respondent as to Howard is sustained.

In computing the value of the decedent's partnership interest for inclusion in his gross estate, respondent included an amount as the value of the decedent's share of the net income of the business for the period of its tax-

able year ending with his death. The parties agree that if the value should include earnings of Frank from that source, the correct amount is $154,972.05, representing one-half of net income of the partnership for the period, less $20,700 distributable as "salary."

The amount in controversy was not reported in the final income tax return of Frank, and, other than the $20,700, no amount was included by respondent in determining the deficiency. The income tax return of Howard for the calendar year 1948 included an amount for all of the net income of the partnership for the fiscal year ended January 31, 1948, less the $20,700 of earnings distributable to Frank for the period prior to his death. Respondent concedes on brief that Howard, under the partnership agreement, is taxable on all of the earnings for that period, and disagrees with petitioners only on the periods the profits are subject to tax.

While recognizing that the agreement entered into by the partners to determine their distributive shares of the earnings of the business makes the amount taxable to Howard and, therefore none taxable to Frank, respondent's action has placed him in a position of holding, in effect, that Frank had an interest in the earnings as property at the time of his death. He says that the value of the interest at death is not dependent upon the recipient of the earnings, while the gist of petitioners' contention seems to be that if Howard is taxable on the earnings Frank could not have had an interest in them at his death. Respondent says our conclusion is controlled by *Estate of Robert R. Gannon*, 21 T.C. 1073. Petitioners disagree with that case and distinguish it.

The agreement in the *Gannon* case required a valuation of the net assets of the partnership at the beginning of each year and an equal proportionment among the three partners as their investment in the business. Other provisions provided that on the death of a partner the survivors could elect to continue the business or liquidate it.

If continued under the option, the estate of a deceased partner was to receive for the interest of the decedent at his death the amount previously fixed by all of the partners as the value at the beginning of the year; nothing for earnings to the date of death. If the survivors elected to liquidate the business, the estate of a deceased partner was to receive one-third of the proceeds of liquidation. The survivors elected to continue the business and, thereafter, in accordance with the partnership agreement, paid to the estate the sum agreed upon as the value of the decedent's interest at the beginning of the partnership year. Nothing was paid to the estate for profits earned by the business to the date of the decedent's death. Our conclusion under the circumstances was that the decedent's share of the earnings of the partnership for the partnership year prior to his death should be included in the value of the decedent's interest for estate tax purposes. Distinguishable facts are present here.

The two partners in the Knipp partnership saw fit for business convenience to qualify their rights to earnings. If they survived the partnership year, each was to receive one-half of the profits as his distributive share, and if one died during the year, as was the case, his distributive share was, by the occurrence of that event, to be limited to the earnings distributable as "salary." The right to a share of earnings in excess of "salary" was thus wholly contingent upon survival to the end of the accounting period, and until that contingency ceased to exist no partner had a vested interest in profits already earned. Frank never had during the crucial period more than a potential right to profits in excess of the amount designated as salary, and his death prevented that right from maturing. Not being entitled to any part of the $154,972.05 of profits at the time of his death, he had no interest to value for inclusion in his gross estate.

Death of a partner in the *Gannon* case did not as here, completely destroy an unmatured right to a distributive share of earnings. Until the surviving partners exercised

their option there remained the probability that liquidation would occur with the accompanying right of the estate of the deceased partner to profits. Here, liquidation was mandatory for the benefit of the survivor as to profits. The right of the decedent in the *Gannon* case to earnings was subject to a condition subsequent, and not a condition precedent, as here.

The difference in the facts in these proceedings call for a different conclusion. Accordingly, we find that no amount is includible in the estate of Frank as value for property interest in earnings of the partnership to the date of his death.

Under the settlement agreement entered into in 1951 with Maritime the partnership paid an amount for interest on an overpayment made in 1946. Of the amount paid, $8,656.67 was for interest accrued prior to January 31, 1947. One-half of the amount was charged to Frank's capital account as of January 31, 1947, and was allowed as a deduction by the respondent in determining the net income of the partnership for the year ended on that date. Notwithstanding such recognition of the amount as an accruable expense of the partnership, respondent now says on brief that the amount was not accruable prior to October 1, 1951, the date on which the Attorney General accepted the partnership's offer of settlement and requested payment of the interest, and that as the expense should have been borne in its entirely by Howard under paragraph Eleven of the partnership agreement the value of Frank's interest in the partnership for inclusion in gross estate should be increased by the amount of $4,328.34 charged to his capital account.

The action of respondent in allowing the amount of interest as a deduction in computing the net income of the partnership for the year ended January 31, 1947, infers a determination that liability to pay interest existed at all times after the overpayment was made by Maritime in April 1946. The liability to pay was sufficient to accrue the interest at the end of the year as a deductible expense.

No reason appears, under the circumstances, for not adjusting the capital account of Frank to reflect the accrued liability. Accordingly, we sustain the petitioners on this issue.

At the time of Frank's death the partnership was the beneficiary of 11 policies of insurance on his life, the proceeds of which, amounting to $90,512.32, the respondent included in the decedent's gross estate under the provisions of section 811(g) on the ground that the premiums were paid indirectly by the decedent. On brief respondent relies upon section 811(g)(2), set forth, in part, in the margin,[6] which was included in the Internal Revenue Code of 1939 by section 404(a) of the Revenue Act of 1942. Specifically, he says that proceeds of the insurance are includible in the gross estate of the decedent because the premiums were paid directly or indirectly by the decedent, and that at the time of his death the decedent possessed incidents of ownership exercisable either alone or in conjunction with another person.

The parties agree that all of the policies were assigned to the partnership with the exception of the one issued by the Sun Life Assurance Company of Canada. As to it, respondent says its value is includible in gross estate on an additional ground, namely, that the assured retained the right to change the beneficiary. Petitioners' reply to that contention is that the right to change the beneficiary was not retained in the assignment of the policy to the

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[6] Sec. 811. Gross Estate.

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(g) Proceeds of Life Insurance.—

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(2) Receivable by Other Beneficiaries.—To the extent of the amount receivable by all other beneficiaries as insurance under policies upon the life of the decedent (A) purchased with premiums, or other consideration, paid directly or indirectly by the decedent, in proportion that the amount so paid by the decedent bears to the total premiums paid for the insurance, or (B) with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. * * *

bank and when the bank reassigned the policy to the partnership the latter acquired the right to change the beneficiary.

The assignment to the bank as security for a loan was a contract separate and distinct from the contract of insurance. *New York Life Insurance Co.* v. *Dunlevy*, 214 F. 1, affd. 241 U.S. 518. The partnership, as the designated beneficiary of the policy, had no more than an expectancy under the insurance, which it assigned to the bank, whose economic interest in the policy never exceeded the amount of the partnership's indebtedness to it. The partnership never had the right to change the beneficiary and, therefore, could not assign it. Upon payment of the debt to the bank its interest in the policy ceased and its reassignment to the partnership obviously was merely to transfer such rights as it had received from the partnership as assignee. Never having had a power of appointment over the policy, the partnership received none under the bank's reassignment. In short, the bank's transfer merely placed the parties where they stood before the first assignment was made. As the assured, decedent had the right to change the beneficiary, and that right continued to the time of his death.

The right of decedent to change the beneficiary was an incident of ownership and the proceeds of the policy are includible in gross estate under subsection (B) of section 811(g)(2). *Estate of Judson C. Welliver*, 8 T.C. 165; *Estate of Eugene F. Saxton*, 12 T.C. 569; *Estate of Emil M. Goldblatt*, 16 T.C. 204; *Fried* v. *Granger*, 105 F. Supp. 564, affd. 202 F. 2d 150.

The parties agree that the other 10 policies of insurance constituted assets of the partnership at the time of the decedent's death. Respondent included the proceeds of the insurance in gross estate upon the ground that the premiums were paid indirectly by the decedent. Such insurance is includible in gross estate under subsection (A) of section 811(g). On brief, while adhering to that

view, he asserts that the proceeds are also includible under subsection (B), a provision independent of subsection (A). Petitioner argues that neither of the provisions requires the inclusion of the insurance as property possessed by Frank at his death. Thus, the difference between the parties is whether respondent's determination is sanctioned by either of the subsections.

Petitioner says that the answer to respondent's action under subsection (A) is found in what we said in *Estate of George Herbert Atkins*, 2 T.C. 332. Respondent seeks to distinguish that case upon the ground that it was decided under the statute before the amendment by the Revenue Act of 1942.

The precise question in the *Atkins* case was whether the policies of insurance held by and payable to a partnership on the life of the deceased partner were "taken out by the decedent upon his own life," the premiums having been paid by the partnership. In deciding that question we discussed at considerable length the interest of a partner in firm assets and concluded that the funds used to pay the premiums constituted partnership property and that:

> * * * the decedent did not actually pay, directly or indirectly, any part of the insurance premiums with funds belonging to him. * * * It [the partnership] chose to invest some of its funds in acquiring an asset, viz., the three insurance policies. It had full control over them and all legal incidents of ownership. * * * [p. 342]

So concluding we decided that the insurance was taken out by the partnership rather than by the decedent upon his own life. While the death in that case occurred in September 1939, and the issue was controlled by the statute then in effect, the conclusion as to payment of the premiums was reached in the light of the amendment made by section 404 of the Revenue Act of 1942.

The purpose of the provision was to prevent avoidance of the estate tax. H. Rept. No. 2333, 77th Cong., 2d Sess., p. 162; S. Rept. No. 1631, 77th Cong., 2d Sess., p. 235. There is no indication here of a plan to avoid estate tax. To the contrary, the acquisition of the insurance appears to have been nothing more than the purchase of a partnership asset in the ordinary course of business. The funds so used were partnership property and the decedent's interest in the partnership was no more than his share of the profits and surplus, as defined in the partnership agreement. Flack's Ann. Code of Maryland, article 73A, sections 8 and 26.

Respondent quotes, without discussion, from Regulations 105 to the effect that a decedent pays the premiums if payment is made by a corporation which is his alter ego, or by a trust, the income from which is taxable to him. Like statements appear in the Committee reports, *supra*. There is no such similarity here, for Frank's interest in profits never exceeded 50 per cent and Howard had at all times an equal voice as to partnership matters.

No reason appearing for departing from the reasoning of the *Atkins* case, *supra*, on this point, we conclude that the insurance proceeds are not includible in the gross estate under subsection (A).

Respondent relies upon the rationale of *Commissioner v. Treganowan*, 183 F. 2d 288, reversing 13 T.C. 159, followed in *Estate of William E. Edmonds*, 16 T.C. 110, and *Estate of Emil M. Goldblatt*, *supra*, to support his present view that the decedent possessed incidents of ownership in the insurance at the time of his death.

In the *Treganowan* case the New York Stock Exchange, of which the decedent was a member at the time of his death, had a plan to pay $20,000 to, in general, the family or heirs of a deceased member. A member's right to designate a beneficiary under the plan, held to be insurance, was limited to the members of the designated group. The power of a member to sell his seat on the Exchange, with

the insurance rights that would go with it, was regarded as sufficient to make him the owner of the insurance for the purposes of subsection (B). In the *Goldblatt* case it was stipulated that the "decedent possessed all of the incidents of ownership in both policies to the date of his death" and, therefore, the question here was not before us for decision.

Respondent concedes that the insurance was an asset of the partnership and that Frank had no rights in the policies other than those flowing from his partnership interest. The inference from such concessions is that Frank, in his individual capacity, had no incidents of ownership in the policies, and respondent cites no specific fact of ownership.

One of the conclusions reached in the *Atkins* case, *supra*, in deciding that the policies of insurance were taken out by the partnership rather than by the decedent there, was that the firm had complete control over them and held all of the incidents of ownership. The material facts here are the same. Nothing in the *Treganowan* case requires a contrary conclusion. Decedent, as an individual, had no power to exercise rights of ownership over the assets and sale of his partnership interest would not have transferred any rights in specific assets of the firm. *United States* v. *Shapiro*, 178 F. 2d 459. Accordingly, we hold that the proceeds of the 10 policies do not constitute assets of Frank's estate.

Decisions will be entered under Rule 50.

THE TAX COURT OF THE UNITED STATES

ESTATE OF FRANK H. KNIPP, Deceased, HOWARD F. KNIPP, Executor, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

Docket No. 42545

Respondent's Request for Entry of Decision

The attached computation reflecting a deficiency in estate tax in the amount of $2,922.58 is submitted on behalf of the respondent in compliance with the opinion of the Court determining the issues in this proceeding.

The computation is submitted without prejudice to the respondent's right to contest the correctness of the decision entered herein by the Court pursuant to the statute in such cases made and provided.

(Signed) JOHN POTTS BARNES
Chief Counsel
Internal Revenue Service

Of Counsel:

CECIL H. HAAS
Regional Counsel

PHILIP A. BAYER
Assistant Regional Counsel

PAUL E. WARING
Special Attorney
Internal Revenue Service

AUDIT STATEMENT

(Rule 50 Computation)

In re: Estate of Frank H. Knipp, Deceased
Howard F. Knipp, Executor
600 S. Pulaski Street
Baltimore, Maryland

Docket No. 42545

Date of Death: November 21, 1947

ESTATE TAX

Gross Deficiency	$2,922.58
Additional credit allowable, if substantiated	none
Net deficiency	$2,922.58

The attached schedules have been prepared on the basis of the Rule 50 Memorandum Opinion of The Tax Court of the United States filed October 31, 1955.
Estate of Frank H. Knipp, Deceased

Schedule 1

Adjustments to Net Estate

		For Basic Tax	*For Additional Tax*
Net estate as shown in statutory notice of deficiency dated May 16, 1952		$548,593.91	$588,593.91
Deductions:			
(a) Miscellaneous property	$167,579.82		
(b) Federal and state tax deficiencies	86,331.91		
(c) Administrative expense	9,623.35		
(d) Insurance	86,689.52	350,224.60	350,224.60
Net estate as adjusted		$198,369.31	$238,369.31

Schedule 2

Explanation of Adjustments

(a) In accordance with the Memorandum Opinion of The Tax Court, value of miscellaneous property is decreased in the amount of $167,579.82, computed as follows:

Schedule F, item 1, value of decedent's interest in partnership of John C. Kuipp and Sons, as shown in statutory notice		$281,180.90
Add items stipulated:		
Federal income tax deficiency	$108,043.55	
State income tax adjustment	9,114.67	117,158.22
Total		$398,339.12
Less items stipulated:		
Cash proceeds from sale of lumber and Carroland Farm, included in Schedule C of return	$36,954.52	
Income tax refund	55,194.94	
Interest on tax refund	13,516.55	105,666.01
Balance		$292,673.11
Adjustments determined in Rule 50 Memorandum Opinion:		
Partnership income eliminated	$184,948.54	
Interest on overpayment	4,328.34	189,276.88
Partnership interest as adjusted		$103,396.23
Partnership interest as shown in statutory notice		281,180.90
Net decrease in partnership interest		$177,784.67
Less:		
Interest on tax refund		10,204.85
Net decrease in miscellaneous property		$167,579.82

In accordance with The Tax Court's Rule 50 Memorandum Opinion, one-half of the partnership profits to the date of death of decedent are not includible in the gross estate of decedent as value of a property interest in the earnings of the partnership.

The value of the interest in the partnership is decreased in the amount of $4,328.34, representing decedent's share of the interest to January 31, 1947, owed to United States Maritime Commission.

Miscellaneous property is increased in the amount of $10,204.85, representing interest accrued up to date of death on the income tax refund.

(b) In accordance with the Memorandum Opinion of The Tax Court, the value of the estate is decreased in the amount of $86,331.91, for net tax adjustment, computed as follows:

Federal income tax for 1947	$108,943.55
Net federal income tax deficiency for 1945 and 1946	24,181.00
Net interest on federal income tax deficiency for 1945 and 1946	187.63
State income tax liabilities	9,114.67
Total	$141,526.85
Less: Refund of Federal income taxes for 1943, 1944 and 1945	55,194.94
Net decrease in value of estate	$86,331.91

(c) In accordance with the Memorandum Opinion of The Tax Court, an additional deduction in the amount of $9,623.35 is allowed for administrative expenses, computed as follows:

Legal fees, Harry E. Karr	$1,000.00
Hilgartner Marble Co.	153.00
Loudon Park Cemetery	50.00
Legal fees, Paul, Weiss, Rifkind, Wharton & Garrison	5,496.33
Legal fees, George H. Bald	2,924.02
Total deduction allowable	$9,623.35

(d) In accordance with the Memorandum Opinion of The Tax Court, value of the estate is decreased in the amount of $86,689.52 for life insurance, includible in gross estate, computed as follows:

Proceeds of insurance included in gross estate, as shown in statutory notice		$90,512.32
Proceeds of unassigned policy with Sun Life Assurance Co. of Canada	$5,000.00	
Less: One-half of cash value of $2,354.40 set up on partnership books 1/31/47	1,177.20	3,822.80
Amount brought forward		$90,512.32
Amount brought forward		3,822.80
Decrease in value of life insurance		$86,689.52

Schedule 3

Computation of Estate Tax

Net estate for basic tax, Schedule 1		$198,369.31
Net estate for additional tax, Schedule 1		$238,369.31
Gross basic tax		$ 4,451.08
Less: Credit for State estate, inheritance, legacy or succession taxes		3,560.86
Net basic tax		$ 890.22
Total gross tax, basic and additional	$62,210.79	
Less: Gross basic tax	4,451.08	57,759.71
Net estate tax liability		$ 58,649.93
Estate tax assessed:		
May 1949 list, Page 100, Line 4		55,727.35
Deficiency in estate tax		$ 2,922.58

No credit has been given to the petitioner in the aforementioned computation for the deficiency in income tax of $18,500.38 determined by The Tax Court to be due in Docket No. 50154, since this amount has not been paid, and since the petitioner has informed the respondent that a petition for review with respect to this docket will be filed.

Order Vacating Decision and Decision—Docket No. 42545

Pursuant to Opinion of the Tax Court filed October 31, 1955, respondent filed a computation on March 13, 1956. Petitioner filed its objections to respondent's computation on March 26, 1956.

Pursuant thereto this Court entered its decision dated April 5, 1956, which, by agreement of the parties, this Court now orders and it is hereby vacated, and in lieu thereof it is now

ORDERED and DECIDED: That there is a deficiency in estate tax in the amount of $2,922.58.

(Signed) LUTHER A. JOHNSON
Judge

Enter: Entered April 24, 1956.

Order Vacating Decision and Decision—Docket No. 50153

Pursuant to Opinion of the Tax Court filed October 31, 1955, respondent filed a computation on March 13, 1956, which was agreed to by the petitioner. Pursuant thereto this Court entered its decision dated April 5, 1956, which, by agreement of the parties, this Court now orders and it is hereby vacated, and in lieu thereof it is now.

ORDERED and DECIDED: That there is a deficiency in income tax for the calendar year 1947 in the amount of $351,892.70.

(Signed) LUTHER A. JOHNSON
Judge

Enter: Entered April 24, 1956.

Order Vacating Decision and Decision—Docket No. 50154

Pursuant to Opinion of the Tax Court filed October 31, 1955, respondent filed a computation on March 13, 1956, which was agreed to by the petitioner. Pursuant thereto this Court entered its decision dated April 5, 1956, which, by agreement of the parties, this Court now orders and it is hereby vacated, and in lieu thereof it is now

ORDERED and DECIDED: That there is a deficiency in income tax for the period January 1, 1947, to November 21, 1947, in the amount of $18,500.36.

(Signed) LUTHER A. JOHNSON,
Judge

Enter:

Petition for Review—Tax Court Docket Nos. 42545, 50153, 50154

COME NOW the petitioners in the above-entitled causes, by their attorney Carolyn E. Agger, and hereby petition the United States Court of Appeals for the Fourth Circuit to review the decisions entered by The Tax Court of the United States on April 24, 1956, ordering and deciding

(a) in Docket No. 42545 that there is a deficiency in the estate tax of the Estate of Frank H. Knipp in the amount of $2,922.58, (b) in Docket No. 50153 that there is a deficiency in the income tax of Howard F. Knipp for the calendar year 1947 in the amount of $351,892.70, and (c) in Docket No. 50154 that there is a deficiency in the income tax of the Estate of Frank H. Knipp for the period from January 1, 1947 to November 21, 1947, in the amount of $18,500.36.

The petitioners all reside in the State of Maryland. The estate tax return of the Estate of Frank H. Knipp and the income tax returns of Howard F. Knipp and the Estate of Frank H. Knipp for the periods involved were all filed with the collector of internal revenue for the district of Maryland, whose office is located within the circuit of the United States Court of Appeals for the Fourth Circuit.

Petitioners file this petition pursuant to the provisions of sections 7482 and 7483 of the Internal Revenue Code of 1954. The purpose of this petition in respect to Tax Court Docket No. 42545 is protective. It is filed in order to prevent the decision of The Tax Court of the United States in that docket number from becoming final before the ultimate determination of the deductions from Frank H. Knipp's gross estate for the federal income tax involved in Tax Court Docket No. 50154 and for additional legal and administrative expenses.

CAROLYN E. AGGER
1614 Eye Street, N.W.,
Washington, D.C.
Counsel for petitioner

Designation of Contents of Record—Tax Court Docket Nos. 42545, 50153, 50154

To the Clerk of The Tax Court of the United States:

You will please prepare, transmit, and deliver to the Clerk of the United States Court of Appeals for the Fourth Circuit copies duly certified as correct of the following documents and records in the above-entitled causes, in connection with the petition for review heretofore filed by the petitioners:

1. Docket entries of all proceedings before the Tax Court.

2. Pleading before the Tax Court, as follows:

(a) Second amended petition in Docket No. 42545, including annexed copy of notice of deficiency.

(b) Answer to second amended petition in Docket No. 42545.

(c) Petitions in Docket Nos. 50153 and 50154, including annexed copies of notices of deficiency.

(d) Answers in Docket Nos. 50153 and 50154.

3. Order reopening and reconsolidating and setting cases for further hearing, dated May 20, 1954.

4. Stipulation of Facts introduced at February 8, 1954, hearing and attached exhibits 4-D; 6-F; 7-G; 8-H; 9-I; 10-J; 12-L and BB; 13-M; 17-Q.

5. Introductory paragraph and paragraphs eight and ten of Additional Stipulation of Facts introduced at October 4, 1954, hearing.

6. From the official transcript of the testimony before the Tax Court at the hearing held on February 8, 1954, that testimony of Howard F. Kripp beginning at line 18 of page 19 and continuing through line 11 of page 94.

7. Petitioner's exhibits 28 through 34, received in evidence at the February 8, 1954, hearing.

8. From the official transcript of the testimony before the Tax Court at the October 4, 1954, hearing that testimony of Howard F. Knipp beginning at line 10 of page 41 and continuing through line 2 of page 43, and that testimony of John C. Knipp beginning at line 6 of page 56 and continuing through line 17 of page 57, and beginning at line 9 of page 61 and continuing through line 9 of page 62.

9. Petitioner's exhibit 51 and respondent's exhibit RR received in evidence at the October 4, 1954, hearing.

10. Findings of fact and opinion of the Tax Court.

11. Respondent's request for entry of decision in Docket No. 42545.

12. Decisions of the Tax Court.

13. Petition for review.

14. This designation of contents of record on review.

CAROLYN E. AGGER
1614 Eye Street, N.W.
Washington, D.C.
Attorney for petitioner

U. S. TREASURY DEPARTMENT
Office of Internal Revenue Agent in Charge

Baltimore, Maryland
May 16, 1952

Internal Revenue Service
IT:UA:EG:43262-Maryland
Estate of Frank H. Knipp
Date of Death: November 21, 1947
Mr. Howard F. Knipp, Executor
600 South Pulaski Street
Baltimore 23, Maryland

Dear Sir:

You are advised that the determination of the estate tax liability of the above-named estate discloses a deficiency of $120,980.52, as shown in the statement attached.

In accordance with the provisions of existing internal revenue law, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with the Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is Saturday, Sunday, or legal holiday in the District of Columbia, in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays, and legal holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to this office for the attention of . The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt

of the form, or on the date of assessment, or on the date of payment, whichever is earlier.

Very truly yours,

John. B. Dunlap, Commisisoner

By:

s/ J. C. Wilmer

Internal Revenue Agent in Charge

Enclosures:
Statement
Form 1276
Agreement Form

IT:US:EG-13262-Maryland
Estate of: Frank H. Knipp
Date of death: November 21, 1947

STATEMENT

	Liability	Assessed	Deficiency
Estate Tax	$176,707.87	$55,727.35	$120,980.52

ADJUSTMENTS TO NET ESTATE

Net estate, basic tax, as returned		$187,780.49
ADDITIONS TO VALUE OF NET ESTATE		
Real Estate	$ 41,549.20	
Stocks and Bonds	542.49	
Insurance	90,512.32	
Other Miscellaneous Property	228,209.41	360,813.42
Net estate for basic tax, as adjusted		$548,593.91
Net estate for additional tax, as adjusted		$588,593.91

EXPLANATION OF ADJUSTMENTS

Real Estate	Returned	Determined
Item 1	$125,000.00	$163,250.00
Item 2	5,200.00	8,499.20

Sales price of both items, determines fair market value date of death.

Stocks & Bonds	Returned	Determined
Item 2	$1,687.00	$1,838.83
3	2,000.00	2,446.00
4	1,416.00	1,350.51
6	1,020.00	1,023.13
7	1,020.00	1,023.13
8	1,020.00	1,023.13
9	1,020.00	1,023.13
10	1,026.00	1,023.13
32	75.50	76.00

Determined values secured from reliable statistical records.

Insurance	Returned	Determined
Item a		$5,006.45
b		10,012.90
c		5,000.00
d		10,025.28
e		10,000.00
f		10,091.12
g		10,091.10
h		10,126.60
i		5,052.97
j		5,034.00
k		10,070.90

Included as part of gross taxable estate, by reason of indirect payments of premiums of decedent, as provided under Section 811 (g) of the Internal Revenue Code.

Other Miscellaneous Property:

	Returned	Determined
Item 1	$54,875.96	$281,180.90
Additional		
Salary due decedent		1,812.50
Insurance refund real estate sold		91.97

Item 1. Representing decedent's interest in partnership of John C. Knipp & Sons. Value determined as date of death, as provided in section 811 (j&k) of Internal Revenue Code.

COMPUTATION OF ESTATE TAX

	Returned	*Determined*
Gross estate for basic tax	$293,117.77	$653,931.19
Deductions	105,337.28	105,337.28
Net estate for basic tax	$187,780.49	$548,593.91
Net estate for additional tax	$227,780.49	$588,593.91
Gross basic tax		$ 19,929.70
Total gross tax, basic and additional	$176,707.87	
Gross basic tax	19,929.70	$156,778.17
Total gross and additional tax payable		$176,707.87
Credit for State estate, inheritance, legacy, or succession taxes (none established)		-0-
Net estate tax liability		$176,707.87
Estate tax assessed, List May, 1949 Page 106 Line 4 Paid 5/19/49		55,727.35
Deficiency tax		$120,980.52

Upon receipt of a waiver or upon the expiration of ninety (90) days from the date of this letter if a petition is not filed with The Tax Court of the United States, the deficiency of $120,980.52 will be assessed. In the event that evidence of payment of State estate, inheritance, legacy or succession taxes totaling $15,943.76 as required by Section 81.9 of Regulations 105 is filed within the ninety day period, the net deficiency in the amount of $105,036.76 will be assessed.

TURN TO NEXT CARD

Form 1065A
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

PARTNERSHIP RETURN OF INCOME

(TO BE FILED ALSO BY SYNDICATES, POOLS, JOINT VENTURES, ETC.)

For Fiscal Year ~~1933~~ 1934

Fiscal Year begun 2/1/1933, ~~1932~~, and ended 1/31/1934, ~~1933~~

File This Return Not Later Than the Fifteenth Day of the Third Month Following the Close of the Fiscal Year

DUPLICATE

DETACH AND RETAIN THIS COPY AND THE INSTRUCTIONS

DUPLICATE

IF YOU NEED ASSISTANCE IN THE PREPARATION OF THIS RETURN, GO TO A DEPUTY COLLECTOR OR TO THE COLLECTOR'S OFFICE

PRINT PLAINLY NAME AND BUSINESS ADDRESS OF THE ORGANIZATION

John C. Knipp and Sons
(Name)

600 Pulaski Street
(Street and Number)

Baltimore, Maryland
(Post Office and State)

Furniture Manufacturers
Kind of Business

Date of Organization

GROSS INCOME

Item and Instruction No.									
1.	Gross Receipts from Business or Profession					$	125	674	42
2.	Less Cost of Goods Sold:								
	(a) Inventory at beginning of year	$							
	(b) Merchandise bought for sale								
	(c) Cost of labor, supplies, etc. (From Schedule A)								
	(d) Total of Lines (a), (b), and (c)	$							
	(e) Less Inventory at end of year Schedule Attached						81	136	24
3.	Gross Profit from Business or Profession (Item 1 minus Item 2)					$	44	538	18
4.	Income from Other Partnerships, Syndicates, Pools, Joint Ventures, etc. (State name and address)								

SCHEDULE A—COST OF LABOR, SUPPLIES, ETC. (See Instruction 2)

ITEMS	AMOUNT	ITEMS	AMOUNT
Labor	$		$
Supplies Schedule Attached	81,136 24		
		TOTAL (Enter as Item 2 (c))	$

SCHEDULE B—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 9)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. AMOUNT REALIZED	4. COST	5. MARCH 1, 1913, VALUE IF ACQUIRED PRIOR TO THAT DATE	6. COST OF IMPROVEMENTS SUBSEQUENT TO ACQUISITION OR MARCH 1, 1913	7. DEPRECIATION ALLOWED (OR ALLOWABLE) SINCE ACQUISITION OR MARCH 1, 1913	8. NET PROFIT OR LOSS (Enter as Item 9)
		$	$ None	$	$	$	$

State how property was acquired

SCHEDULE C—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 9a)

1. KIND OF PROPERTY	2. DATE ACQUIRED	3. DATE SOLD	4. AMOUNT REALIZED	5. COST	6. MARCH 1, 1913, VALUE IF ACQUIRED PRIOR TO THAT DATE	7. COST OF IMPROVEMENTS SUBSEQUENT TO ACQUISITION OR MARCH 1, 1913	8. DEPRECIATION ALLOWED (OR ALLOWABLE) SINCE ACQUISITION OR MARCH 1, 1913	9. NET GAIN OR LOSS (Enter in Column 5, Item 24 on Page 1)
	Mo. Day Year	*Mo. Day Year*	$	$ None	$	$	$	$

State how property was acquired

SCHEDULE D—COST OF REPAIRS (See Instruction 15)

SCHEDULE E—TAXES PAID (See Instruction 17)

SCHEDULE #21

Advertising	$ 851.29
Allowances	421.86
Commissions	155.25
Discount Allowed	6.09
Insurance	2,392.43
Store Expense	175.83
Freight Out	74.52
Heat, Light, Power	2,813.98
Traveling	370.94
Carfare	77.15
Extra Hauling	12.75
Freight in	956.16
Factory Supplies	357.14
Attorney and Collections	512.09
Donations	375.00
Dues and Membership Fees	260.50
Miscellaneous	100.91
Stationery and Office Supplies	497.53
Telephone and Telegraph	1,121.57
Water Rent	93.60
Total	$11,626.59

Schedule 2 E

Cost of Goods Manufactured	
Inventory Raw Materials 2/1/33	$ 3,725.09
Raw Materials Purchased	41,425.44
Direct Labor	34,904.99
Total	$ 80,055.52
Less: Inventory Raw Materials 1/31/34	2,779.67
Cost of Material and Labor put into Process	$ 77,275.85
Inventory Goods in Process 2/1/33	$ 12,048.66
Inventory Goods in Process 1/31/34	17,417.80
Increase to be Deducted	$ 5,369.14
Prime Cost of Goods Manufactured	$ 71,906.71
Cost of Goods Sold	
Inventory Finished Goods 2/1/33	$ 52,090.57
Finished Goods Purchased	5,454.33
Prime Cost of Goods Manufactured	71,906.71
Total	$129,451.61
Less: Inventory Finished Goods 1/31/34	48,315.37
Cost of Goods Sold	$ 81,136.24

SCHEDULE 11-A

Discount Taken		$1,044.01
Interest Earned		236.22
Investment Income		147.48
Rent Clay Street	$957.03	
Less Expenses	400.66	556.37
Sale of Capital Asset (Auto)		150.00
Total		$2,134.08

Exhibit 50

Baltimore, July 9th, 1930.

This acknowledges the receipt by us, as executors of the Estate of Walter Knipp from John C. Knipp and Sons, a partnership, now consisting of Charles J. Knipp, Frank H. Knipp, Howard F. Knipp and John C. Knipp, as surviving partners, of the sum of $84,431.84 being the amount to the credit of Walter Knipp who was one of the partners in the said partnership of John C. Knipp and Sons, and who died on June 12th, 1930; this sum being the amount to the credit of Walter Knipp on the books of the partnership on February 1, 1930 of $86,931.84 Less $2,500.00 paid to him subsequent to February 1, 1930. This amount is paid to us and we receive same in accordance with the terms of an agreement between the partners dated April 30, 1918, which provides that in the event of the death of any partner the amount to the credit of the deceased partner on the firm's books on February 1, 1918, less the amount of his withdrawals or the amount to his credit on any subsequent 1st of February less the amount of his withdrawals shall be paid the executors or administrators of said deceased partner in full settlement of his interest in said partnership.

We understand that the surviving partners are now

vested with all the assets of the firm of John C. Knipp and Sons and assume all liabilities of said firm and that the estate of Walter Knipp has no further interest in the firm's assets or will be called upon to assume or pay any of the firm's liabilities. All interest in property 218 and 220 Clay Street is hereby relinquished by us.

ANNA H. KNIPP
ENOCH HARLAN
Executors.

We also understand and agree that the Estate of Walter Knipp has no longer any interest in the assets and is no longer responsible for the liabilities of John C. Knipp and Sons.

JOHN C. KNIPP AND SONS
CHARLES J. KNIPP
FRANK H. KNIPP

Exhibit QQ

CHARLES H. SCHNEPFE, JR. & CO.
Certified Public Accountants
O'Sullivan Building
Baltimore 2, Maryland

May 4, 1949

Mr. Howard F. Knipp,
Executor of the Estate of Frank H. Knipp,
600 South Pulaski Street,
Baltimore 23, Maryland.

Dear Sir:

We have prepared an analysis of the capital account of Frank H. Knipp, Deceased, in John C. Knipp & Sons for the period from February 1, 1947 to March 18, 1949. This analysis has been prepared directly from the books of account and records of John C. Knipp & Sons, and is comprised of the following exhibit and schedules:

Exhibit A—Frank H. Knipp, Deceased, Analysis of Capital Account in John C. Knipp & Sons, for the period from February 1, 1947 to March 18, 1949, with additions and deductions subsequent to November 21, 1947, as presently determined, applicable to the capital account.

Schedule A-1—Frank H. Knipp, Deceased, Analysis of Capital Account in John C. Knipp & Sons. Schedule of Adjustments of Prior Years.

Schedule A-2—Frank H. Knipp, Deceased, Analysis of Capital Account in John C. Knipp & Sons. Schedule of Payments made for the account of Frank H. Knipp, Deceased, for period from November 22, 1947 to March 18, 1949.

Very truly yours,

CHARLES H. SCHNEPFE, JR. & CO.

By

cc: Mr. Harry E. Karr
Fidelity Building
Baltimore 1, Maryland

Schedule A-1

FRANK H. KNIPP, DECEASED

Analysis of Capital Account in John C. Knipp & Sons
Schedule of Adjustments of Prior Years

Personal items, January 31, 1942	$ 56.00
Knipp Furniture Co. sales adjustment, January 31, 1943	200.00
Personal work, January 31, 1944 to January 31, 1946	443.87
Traveling entry, January 31, 1946 disallowed by Revenue Agent	21,942.02
War Bonds for years ended January 31, 1943 and 1944 charged to expense in error	3,750.00
Adjustment of auto expense for year ended January 31, 1945-re: Depreciation	129.50
Profit and loss Adjustment, year ended January 31, 1941-40%	1,144.33
Profit and Loss Adjustment, year ended January 31, 1942-40%	1,617.61
Profit and Loss Adjustment, year ended January 31, 1943, 1944 and 1945-40%	69,094.87
Profit and Loss Adjustment, year ended January 31, 1946-40%	160.71
Profit and Loss Adjustment, year ended January 31, 1947-50%	3,848.81
Total—exhibit A	$102,387.72

4. Income from Other Partnerships, Syndicates, Pools, Joint Ventures, etc. (State name and address)					
5. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)					
6. Interest on Tax-free Covenant Bonds upon which a Tax was Paid at Source					
7. Rents					
8. Royalties					
9. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule B)					
10. Dividends on: (a) Stock of Domestic Corporations subject to taxation under Title I of 1932 Act					
(b) Stock of Domestic Corporations not subject to taxation under Title I of 1932 Act					
(c) Stock of Foreign Corporations					
11. Other Income: (State nature of income)					
(a) Schedule Attached			$ 3	134 08	
(b)					
12. TOTAL INCOME IN ITEMS 3 TO 11					$ 46 672 26
DEDUCTIONS					
13. Salaries of Employees. (Do not include compensation for partners or members)		$	8	997 47	
14. Rent on Business Property			5	388 67	
15. Repairs. (From Schedule D)			2	660 56	
16. Interest on Indebtedness			2	679 59	
17. Taxes on Business Property. (From Schedule E)			4	158 13	
18. Losses by Fire, Storm, etc. (From Schedule F)					
19. Bad Debts. (From Schedule G)			2	509 55	
20. Depreciation, Obsolescence, and Depletion. (From Schedule H)			5	857 06	
21. Other Deductions Authorized by Law: (Explain below or on separate sheet) Schedule Attached			11	626 59	
					47 845 09

State how property was acquired

SCHEDULE D—COST OF REPAIRS (See Instruction 15)

1. Items	2. Amount (Enter as Item 15)
Auto Trucks	$ 2,392 12
Buildings	16 50
Machinery	251 74
	$ 2,660 36

SCHEDULE E—TAXES PAID (See Instruction 17)

1. Items	2. Amount (Enter as Item 17)
Baltimore City, etc.	$ 4,158 13

SCHEDULE F—EXPLANATION OF LOSSES BY FIRE, STORM, ETC. (See Instruction 18)

1. Kind of Property	2. Date Acquired	3. Cost or Value as of March 1, 1913, Whichever Greater	4. Subsequent Improvements	5. Depreciation Allowable Since Acquisition	6. Insurance and Salvage Value	7. Deductible Loss (Enter as Item 18)
		$	$	$	$	$
		None				

State how property was acquired

SCHEDULE G—EXPLANATION OF DEDUCTION FOR BAD DEBTS (See Instruction 19)

	Year	Charged on Account	Bad Debts
(a)	1930	$	$
(b)	1931		
(c)	1932		
(d) Reserve for Bad Debts based on Charge Sale	1933	2,509 35	

SCHEDULE H—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 20)

1. Kind of Property (If Buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquisition	5. Cost (Exclusive of Land)	6. March 1, 1913, Value if Acquired Prior to that Date (Exclusive of Land)	7. Depreciation Allowed (or Allowable) in Prior Years	8. Depreciation Allowable this Year
Building, Clay Street	Various	New	50 years	$ 22,167 06	$	$	$ 443 34
Building, Pulaski Street	Various	New	33 1/3 yrs.	70,046 61			2101 40
Annex, Pulaski Street	Various	New	33 1/3 yrs.	19,863 19			595 90

Exhibit A

FRANK H. KNIPP, DECEASED

Analysis of Capital Account in John C. Knipp & Sons, For period from February 1, 1947 to March 18, 1949 With additions and deductions subsequent to November 21, 1947, as presently determined, applicable to the capital account

Balance, February 1, 1947		$226,320.90
Deductions:		
February 25, 1947		
Additional 1945 North Carolina State income tax	$ 84.49	
March 15, 1947		
Balance of 1946 Federal income tax	2,796.19	
March 15, 1947		
First quarter 1947 estimated Federal income tax	250.00	
June 13, 1947		
Second quarter 1947 estimated Federal income tax	250.00	
September 15, 1947		
Third quarter 1947 estimated Federal income tax	250.00	
November 15, 1947		
Union Memorial Hospital bill	128.09	
November 6, 13 & 20, 1947		
Three payments of $88.00 each to Stella Reddick	264.00	
Sundry personal items to November 21, 1947	452.50	
		4,475.27
Balance, November 21, 1947		221,845.63
Additions:		
January 15, 1948		
Net proceeds from sale of lumber and Carroland farm	21,216.42	
January 31, 1948		
Close out Knipp Aviation Industries inter-company account	4,008.31	
January 31, 1949		
Refund of Federal income taxes and interest thereon, deposited in Baltimore National Bank, covering years as follows:		

Year	Tax	Interest	Total
1943	$38,800.24	$10,835.89	$49,636.13
1944	1,224.21	262.92	1,487.13
1945	15,170.49	2,417.74	17,588.23
Totals	$55,194.94	$13,516.55	$68,711.49

	68,711.49	
		93,936.22
		315,781.85

Deductions:		
Adjustments of prior years—schedule A-1	102,387.72	
Payments made for the Estate of Frank H. Knipp—schedule A-2	117,161.77	
		219,549.49
Balance, January 31, 1949		96,232.36
Add:		
March 18, 1949		
Refund of Wisconsin State income tax for years 1945 and 1946:		
Tax—$58.99 and Interest—$10.78		69.77
Balance, March 18, 1949		$ 96,302.13

Schedule A-2

FRANK H. KNIPP, DECEASED

Analysis of Capital Account in John C. Knipp & Sons, Schedule of Payments made for the Account of Frank H. Knipp

For period from November 22, 1947 to March 18, 1949

Date	
January 15, 1948	
Fourth quarter 1947 estimated Federal income tax—amended	$ 68,000.00
March 15, 1948	
Balance 1947 Federal income tax	40,042.55
March 15, 1948	
1947 Maryland State income tax	1,119.50
April 13, 1948	
1947 Alabama State income tax	1,112.93
April 13, 1948	
1947 New York State income tax	115.24
April 30, 1948	
Net expense of new Plymouth for Mr. Senft	3.55
December 31, 1948	
1943-44-45 Georgia State income taxes	5,982.68
December 31, 1948	
1946 Maryland State income tax	78.05
December 31, 1948	
1946 Alabama State income tax	7.87
December 31, 1948	
1946 Louisiana State income tax	698.40
Total—exhibit A	$117,161.77

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Commissioner of Internal Revenue,
Petitioner on Review,

v.

Estate of Frank H. Knipp, Deceased,
Howard F. Knipp, Executor,
Respondent on Review.

T. C. Docket No. 42545

Counter Designation of Contents of Record on Review

To the Clerk of The Tax Court of the United States:

COMES NOW the respondent on review in the above-entitled proceeding, by his attorney, Carolyn E. Agger, and for purposes of the petitioner's on review cross petition hereby designates for inclusion in the certified review record, in addition to the documents called for in the consolidated Designation of Contents of Record filed by the petitioners-taxpayers in Docket Nos. 42545, 50153 and 50154, on July 5, 1956 (the petitioners-taxpayers' petition for review in No. 42545 being solely protective) and in addition to the documents called for in the Designation filed by the Commissioner-petitioner on review on or about September 7, 1956, the following:

1. Statutory Notice of Deficiency, dated May 16, 1952, attached to amended petition.

2. Second amended petition.

3. Answer to Second Amended Petition.

4. Paragraphs 1, 6, 7 and 9 of Additional Stipulation of Facts introduced at hearing on October 4, 1954, and joint exhibits referred to in said paragraphs.

5. Exhibits 49, 50 and QQ introduced at hearing on October 4, 1954.

6. Entire transcript of testimony of hearing on October 4, 1954, as corrected by joint motion of the parties, granted November 8, 1954.

7. This designation.

CAROLYN E. AGGER
PAUL, WEISS, RIFKIND, WHARTON & GARRISON
1614 Eye Street, N. W.
Washington, D. C.
Attorney for respondent on Review

Service of a copy of the
within Counter Designation
of Contents of Record on Review
is hereby acknowledged this 7th day
of September, 1956.

(Signed) JOHN POTTS BARNES, CRM
Chief Counsel
Internal Revenue Service
Attorney for Petitioner on Review

16. Interest on Indebtedness				2	879	09		
17. Taxes on Business Property. (From Schedule E)				4	158	13		
18. Losses by Fire, Storm, etc. (From Schedule F)								
19. Bad Debts. (From Schedule G)				2	509	55		
20. Depreciation, Obsolescence, and Depletion. (From Schedule H)				5	857	06		
21. Other Deductions Authorized by Law: (Explain below or on separate sheet) Schedule Attached				11	626	59		
22. TOTAL DEDUCTIONS IN ITEMS 13 TO 21							43	855 02
23. NET INCOME (Item 12 minus Item 22)							$ 2	817 24

24. PARTNERS' OR MEMBERS' SHARES OF INCOME AND CREDITS

(See Instruction 24)

1. NAME AND ADDRESS OF EACH PARTNER OR MEMBER	2. PERCENTAGE OF NET INCOME	3. DIVIDENDS (ITEM 10 (a) ABOVE)	4. BALANCE OF NET INCOME (ITEM 23 MINUS AMOUNT IN COLUMN 3)	5. CAPITAL NET GAIN OR LOSS (SCHEDULE C, COLUMN 9)	6. INCOME TAX PAID AT SOURCE (2% OF ITEM 6)	7. INCOME TAX PAID FOREIGN COUNTRIES OR UNITED STATES POSSESSIONS
(a) Charles J. Knipp (Deceased)		$	$ 4,220 00	$	$	$
(b)						
(c) Frank H. Knipp			601 18			
(d)						
(e) Howard F. Knipp			400 79			
(f)						
(g) John C. Knipp			400 79			
(h)						
(i)						
TOTALS		$	$	$	$	$

(a)	1930	$		
(b)	1931			
(c)	1932			
(d) Reserve for Bad Debts based on Charge Sale	1933	2,509	35	

SCHEDULE H—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 20)

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquisition	5. Cost (Exclusive of Land)	6. March 1, 1913, Value if Acquired Prior to that Date (Exclusive of Land)	7. Depreciation Allowed (or Allowable) in Prior Years	8. Depreciation Allowable this Year
Building, Clay Street	Various	New	50 years	$ 22,167 06	$	$	$ 443 34
Building, Pulaski Street	Various	New	33 1/3 yrs.	70,046 61			2101 40
Annex, Pulaski Street	Various	New	33 1/3 yrs.	19,863 19			595 90
Machinery	Various	New	10 years	31,718 36			2064 64
Delivery Equipment	Various	New	4 years	6,887 92			489 26
Office Furn. and Fix.	Various	New	10 years	1,825 28			142 52
							$ 5837 .06

SCHEDULE I—NONTAXABLE OBLIGATIONS, LIBERTY BONDS, ETC. (See Instruction 25)

1. Obligations or Securities	2. Amount Owned	3. Interest Received
(a) Obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia	$	$
(b) Securities issued under the provisions of the Federal Farm Loan Act, or under such Act as amended, Treasury Bills, and Treasury Certificates of Indebtedness		
(c) Liberty 3½% Bonds and other obligations of U. S, issued before September 1, 1917, and obligations of U. S. possessions		
(d) Liberty 4% and 4¼% Bonds and Treasury Bonds		
(e) Treasury Notes		

MEMORANDA

Office - Supreme Court, U.S.
FILED
JUL 3 1957
JOHN T. FEY, Clerk

No. 1145

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

HOWARD F. KNIPP and ESTATE OF FRANK H. KNIPP,
HOWARD F. KNIPP, EXECUTOR, *Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

CAROLAN E. AGGER,
JULIUS M. GREENMAN,
Counsel for the Petitioners.

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CITATIONS

Cases:

Commissioner v. Estate of Mnookin, 184 F. 2d 89 . . 15, 16
Commissioner v. Estate of Tyree, 215 F. 2d 78 . . 15, 16, 17
Commissioner v. Waldman's Estate, 196 F. 2d 83 . . 15, 16
Girard Trust Co. v. U. S., 182 F. 2d 921 . . . . . 11, 15, 16, 18
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Guaranty Trust Co. v. Commissioner, 303 U. S. 493 ..... 10, 11, 12, 13, 14, 15, 16, 17, 18
Heiner v. Mellon, 304 U. S. 271 ..... 10, 11, 13, 14, 15, 17, 18
Helvering v. Enright, 312 U. S. 636 ..... 17, 18
Helvering v. Morgan's, Inc., 293 U. S. 121 9
Estate of Henderson v. Commissioner, 155 F. 2d 310 ..... 15, 16
Neill v. Phinney, 1957-2 U.S.T.C. ¶ 9738 14
Ray v. Commissioner, 12 T.C.M. 1154 13
Ungar v. Commissioner, 1957-1 U.S.T.C. ¶ 9678 13
Walsh v. Commissioner, 7 T.C. 205 ..... 15, 18

STATUTES:

Flack's Annotated Code, Section 30 15

Internal Revenue Code of 1939:

Section 126 ..... 11, 17, 18

Section 188 8

Section 3797(a)(2) 14

Internal Revenue Code of 1954

Section 1(c) 20

Revenue Act of 1934, Section 42 17

Vinson-Trammel Act 6

MISCELLANEOUS:

Sen. Report No. 1622 on H. R. 8300 19
Statistics of Income, Publication No. 369 of Internal Revenue Service 19

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

HOWARD F. KNIPP and ESTATE OF FRANK H. KNIPP, HOWARD F. KNIPP, EXECUTOR, *Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioners, Howard F. Knipp, and Estate of Frank H. Knipp, Howard F. Knipp, Executor, pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above cases on April 19, 1957.

OPINIONS BELOW.

The opinion of the Tax Court of the United States, printed in Appendix B, hereto, *infra*, at 4a, is reported in 25 T. C. 153. The opinion of the majority of the

Circuit Court of Appeals, and the dissenting opinion, printed in Appendix C, hereto, *infra*, at 31a, is reported in — F.2d —.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on April 10, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1), 62 Stat. 928.

QUESTIONS PRESENTED.

Howard F. Knipp (herein called "Howard") and Frank H. Knipp (herein called "Frank") were members of a partnership, known as John C. Knipp & Sons. The partnership kept its books and filed its income tax returns on the basis of a fiscal year ending on January 31. Howard and Frank kept their books and filed their income tax returns upon the basis of a calendar year. Frank died on November 21, 1947. The following questions are presented:

1. Whether Frank's death on November 21, 1947, terminated the partnership tax year with respect to the surviving partner Howard. An affirmative answer, which the Commissioner urges, would require Howard to include 23 months of partnership income in his income for 1947, i.e., the partnership earnings for its full fiscal year ended on January 31, 1947, and the earnings for the period from February 1, 1947 through December 31, 1947.[1] If the partnership's taxable year continued its normal course until January 31, 1948, as Howard contends, Howard

[1] The period November 21, 1947, the date of Frank's death, to December 31, 1947, having been treated by the Commissioner as a sole proprietorship operated by Howard.

correctly included the partnership earnings for the period of February 1, 1947 through January 31, 1948, in his income for 1948.

2. Whether Frank's death similarly terminated the partnership taxable year with respect to himself, and pyramided into the tax period ending with his death on November 21, 1947, partnership "salary" distributed to him between February 1, 1947, and the date of death (in addition to his share of the partnership earnings for the period February 1, 1946 through January 31, 1947). Frank's "salary" from February 1, 1947 to the date of his death was reported by his estate in 1948.

STATUTES INVOLVED.

The principal statutes involved are section 188 of the Internal Revenue Code of 1939, and various sections of the Uniform Partnership Act of Maryland, all of which are reproduced in Appendix A to this petition at 1a.

THE FACTS.

At the time of Frank's death, Howard and Frank were members of a partnership known as John C. Knipp & Sons. The partnership was engaged in the business of interior woodworking, retail furniture, and shipfitting in Baltimore. A partnership of that name consisting of various members of the Knipp family has been engaged in such a business in Baltimore since 1868. On July 7, 1943, Frank, Howard and John C. Knipp (a brother of Howard) entered into a partnership agreement which provided, among other things, for the payment of "salaries" to the partners of $25,000 a year to Frank and Howard, and

$15,000 a year to John Knipp, payable monthly. (App. B *infra*, at 6a).

After considerable controversy with Frank and Howard, John Knipp withdrew from the partnership in August 1945 and, thereafter Frank and Howard continued to operate the business under the partnership agreement of July 7, 1943, except for an oral agreement providing for an equal division of profits. (App. B *infra*, at 7a, 8a).

The partnership agreement of July 7, 1943, contained the following provision for settlement of a deceased partner's interest in the partnership:

> "ELEVEN: It is agreed among the partners hereto, anything in this agreement to the contrary notwithstanding, that in the event of any partner's death, the account to the credit of said deceased partner on the firm's books on February 1, 1943, or on February 1st in any subsequent year, provided the partnership has run for twelve consecutive months; otherwise the date of settlement shall be as of the prior February 1st, less the amount of his withdrawals over salary, shall be paid to the Executors or Administrators of said deceased partner, and same shall be in full settlement of the deceased partner's interest in said partnership." (App. B *infra*, at 6a-7a).

The fiscal year of the partnership commenced on February 1 of each year, as did the fiscal year of predecessor partnerships. Accordingly, under the partnership agreement, a deceased partner had no right to share in partnership earnings for the fiscal year of the partnership in which the date of his death fell, beyond the so-called "salary." A similar provision with reference to the rights of the deceased

partner had been included in the agreements of predecessor partnerships of John C. Knipp & Sons since at least 1918. (R.* *infra*, at 231, 232; App. B *infra*, at 7a.)

The Tax Court found that Paragraph Eleven was adopted for business convenience in order to avoid closing the books of the partnership and taking inventory on the death of a partner. The Tax Court also found that the partners had an understanding that the capital account of a deceased partner as of any February 1 would be subject to certain adjustments thereafter and after death with respect to any work completed and reflected in the capital account on any February 1. (R. *infra*, at 231; App. B *infra*, at 7a).

Frank's interest in the partnership could not be determined at the time of his death, but was subject to adjustments which could not be made for several years after Frank's death. Frank's capital account had a credit balance of $226,320.90, on the partnership books, on January 31, 1947. This balance was ultimately reduced to $54,875.96 chiefly as a result of renegotiation of various government contracts and settlements of controversies with the Maritime Commission.

The most important controversies may be briefly mentioned: (1) On October 30, 1947, the United States Maritime Commission filed a claim for $322,461.00 against the partnership for progress payments erroneously made for work cancelled on March 8,

* All references to R. are to the record as contained in Appendix B to petitioners' brief in the United States Court of Appeals for the Fourth Circuit below.

1944. (The payments were reported as income in the year of receipt.) On November 21, 1947, the partnership counterclaimed for additional amounts due it for extras which had been expended upon 200 Liberty ships for which the partnership had not been compensated. Negotiations ensued concerning the conflicting claims and settlement was ultimately made by a payment of $144,727.95, in 1949 and 1950 by checks issued by John C. Knipp & Sons after credits of certain amounts owing to the partnership. (2) About September 1945, the Maritime Commission cancelled further work by the partnership on 10 vessels. The partnership filed a contract termination claim. It was not until October 1951, that the negotiated settlement of the claim was finally approved by the Department of Justice. The settlements required adjustments of and the reaching of agreements concerning many items.[2] (3) At the date of Frank's death, the partnership also had certain contracts with the Maritime Commission which were subject to the profit limitation provisions of the Vinson-Trammel Act. The work under some of the contracts

---

[2] Reference to the settlement agreement ultimately negotiated with the Maritime Commission on March 6, 1950 (R. *infra*, at 192-197), which preceded the final settlement with the Department of Justice (R. *infra*, at 199, 200) shows that all invenfory on hand, including scrap, had to be sold, returned to suppliers, delivered to the government, or retained by the contractor, and the price of retained supplies had to be agreed upon as a part of determining the contract termination claims. The same determinations had to be made with reference to subcontractors by the principal contractor. John C. Knipp & Sons was the principal contractor. Arrangements also had to be made settling the amounts due subcontractors. Progress payments and disposal credits had to be accounted for. Thereafter, the whole matter had to be renegotiated and settled with the Department of Justice after a six or seven months' investigation by that agency. (R. *infra*, at 156).

was completed during the fiscal year ended January 31, 1947. It was not until 1949 and 1950 that the amounts in excess of the profit limitations were ultimately negotiated and determined. The excess was then repaid. (4) On November 21, 1947, the partnership also had unsettled claims for work done for the Maritime Commission on ships at Savannah, Georgia, and for termination of the contract as to some of the ships covered by the contract. The contract price was also subject to adjustment for defective work done prior to that date. (R. *infra*, at 160-163, 200-204; App. B *infra*, at 8a-9a).

On February 1, 1948, the partnership sold its inventory and leased its machinery and building to Knipp & Co., a corporation organized on that date. Uncompleted contracts were assigned to the corporation, which completed them. (App. B *infra*, at 9a). Earnings of the business were reported thereafter by the corporation.

The partnership income for the fiscal year ended January 31, 1947, was $301,185.86. Howard reported his distributive share ($150,592.93) of these earnings in his return for the calendar year 1947. The partnership income for the period from February 1, 1947 to November 21, 1947 was $351,344.09 (including Frank's distribution of $20,700.00); and the partnership income for the fiscal year ended January 31, 1948, was $429,458.91 (except for Frank's $20,700.00). Howard included the $429,458.91 in his return for 1948. (R. *infra*, at 24, 26; App. B *infra*, at 11a).

The Commissioner has taken the position that Frank's death terminated the partnership and its accounting period. He has, therefore, included in Howard's 1947 income not only the 12 months of

partnership earnings for its fiscal year ending January 31, 1947, but almost 10 months of partnership earnings for the period from February 1, 1947 to November 21, 1947, plus the earnings for the period from November 21, 1947 to December 31, 1947,[3] the additional total amounting to $377,731.44 (R. *infra*, at 24-26; App. B *infra*, at 12a), which, added to $150,592.93, would tax Howard on $528,324.37, in 1947, or 23 months earnings, at sharply progressive rates.

Similarly, Frank's return for the period ending November 21, 1947, included his share of partnership earnings for the partnership fiscal year ending January 31, 1947. His estate's return for 1948 included his "salary" of $20,700.00 to which Frank was entitled for the period from February 1, 1947 to November 21, 1947. The Commissioner has taken the view that the $20,700.00 should have been included in Frank's return for the period ending with his death on November 21, 1947. (App. B *infra*, at 11a).

The Commissioner's position is based upon section 188 of the Internal Revenue Code of 1939. That section provides that if the tax year of a partner differs from that of the partnership, the partner is to include in his taxable income his share of partnership income for any tax year of the partnership "ending within or with the taxable year of the partner." The Commissioner contends that Frank's death terminated the partnership and, therefore, the normal taxable year of the partnership. Since both the fiscal year ending January 31, 1947, and the taxable period ending with Frank's death, would, under this theory, end during

[3] On the theory that Howard was a sole proprietor during the period between Frank's death and the end of the calendar year 1947.

Howard's calendar year of 1947, Howard would be taxed in one year upon almost 22 months of partnership earnings, plus over one month's earnings (November 21, 1947-December 31, 1947) when the Commissioner regarded Howard as a sole proprietor. The Commissioner's theory would also add Frank's partnership "salary" for the period ending with his death to his distributive share of partnership earnings for the fiscal year ending January 31, 1947, in Frank's taxable year ending with his death.[4]

The Tax Court sustained the Commissioner's adjustments in regard to the income taxes of both Howard and Frank. The majority of the Court of Appeals affirmed the Tax Court's decision, Judge Parker dissenting. In the case of petition r Howard F. Knipp, the income tax deficiency for 1947 is $351,892.70.. In the case of petitioner Estate of Frank H. Knipp, the income tax deficiency for the period ending November 21, 1947, is $18,500.36. (R. infra, at 286).[5]

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[4] "In view of the extent to which the practice of fixing the tax with reference to the twelve months' accounting periods of the taxpayer has been recognized and carried into the structure of the revenue acts, only clear and compelling language . . ." (*Helvering* v. *Morgan's, Inc.*, 293 U. S. 121, 128 (1934)) of the Internal Revenue Code or the decisions of this Court would justify the bunching of more than a year's income from the same entity into one year.

[5] Of course, the deficiencies would be partially offset by the payments made by or in behalf of these taxpayers in 1948, when the income items were included in their returns for that year. The offset is only partial, however, since the bunching of income in one year subjects it to tax at higher progressive rates. This is the reason for the extreme hardship. The reason is not, as the majority below suggests, that Howard's income in 1947 was greater than in 1948. (App. C *infra*, at 42a).

REASONS FOR GRANTING THE WRIT.

1. The Decision of the Court of Appeals is in Conflict With Decisions of This Court and Decisions of Other Courts of Appeals.

The decisions in both Howard's and Frank's cases are contrary to the decisions of other Circuit Courts of Appeals and to the decision of this Court in *Heiner v. Mellon*, 304 U. S. 271 (1938); and are based upon a misconception of the decision of this Court in *Guaranty Trust Co. v. Commissioner*, 303 U. S. 493 (1938).

A. Conflict with decisions of this Court.

Since the opinions in the Courts below and the other pertinent Circuit Court decisions have disagreed on the effect of *Heiner v. Mellon* and the *Guaranty Trust Co.* case, it is necessary first to refer to these decisions.

The majority judges in the Court of Appeals were of the opinion that the "law is authoritatively declared" (App. C *infra*, at 35a) for them in the *Guaranty Trust Co.* case. That case involved the tax liability of a partner who died during the partnership accounting period. The survivors considered the partnership to be terminated by the partner's death, organized a new partnership, effective as of the date of death of the deceased partner, and accounted for the decedent's interest as of the date of death. The question for this Court was whether the income of the partnership for the period ending with the decedent's death, the last taxable period of the partnership, was includible in his return for that period or whether the decedent's share of the earnings for the portion of the fiscal year prior to his death was "to escape taxation" entirely under the law as it then

stood." (See dissent of Judge Parker, App. C *infra*, at 47a). Since the partners terminated the partnership in the *Guaranty Trust* case and did not continue it for purposes of liquidation or any other purpose, its taxable year necessarily terminated perforce of the parties' own acts. That decision does not control a case where the partnership necessarily continued in existence in order to wind up its affairs. In fact, in the *Guaranty Trust* case this Court expressly declared that it was not deciding the taxable year issue.[7]

In *Heiner* v. *Mellon*, however, this Court recognized that the death of a partner does not *terminate* a partnership which continues in existence in order to

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[6] This Court stated in the *Guaranty Trust* case: "We can discern elsewhere in the Act no indication of any Congressional purpose to relieve business income from taxation in the year when, under the applicable provisions of the statute, it is distributable to a partner." 303 U. S. 499-500. The possibility of tax escape was eliminated by the enactment of § 126 of the Internal Revenue Code of 1939 in the Revenue Act of 1942.

[7] This Court stated:

"We need not inquire too meticulously whether the partnership 'taxable year' within the meaning of § 182(a), includes in the special circumstances of this case an accounting period of less than twelve months, here from July 31 to the death of decedent. *Petitioner makes no contention that it does not*, nor could well do so, for if not so included it is not within the phrase 'any taxable year of the partnership,' occurring in the second sentence of § 182(a), on which petitioner relies to exclude the income for that period from taxation otherwise imposed by the general provisions of § 41 and the first sentence of § 182(a)." 303 U. S. at p. 499. (Emphasis added.)

See also *Girard Trust Co.* v. *U. S.*, 182 F. 2d 921, 924 (3rd Cir. 1950) where Judge Hastie states: "Indeed the Court noted that the ending of a taxable year of the partnership with the death of a partner had been conceded."

wind up its affairs. This Court referred to the provisions in the Uniform Partnership Act which state that death of a partner *dissolves* a partnership but does not *terminate* the partnership until the partnership affairs are wound up. This Court found it unnecessary to distinguish the *Guaranty Trust* decision which it had just rendered.

The majority makes the continued sharing of post mortem profits by the decedent partner's estate the determinative factor in the continued existence of the partnership and of its taxable year.[8] The fact that Frank's estate did not share in earnings during the winding up period is the basis for the majority's view that the *Guaranty Trust Company* case governs these cases.

The right to share in earnings is only one index of a continued partnership. This Court based its *Guaranty Trust* decision, as we read it, not upon the fact that the decedent's estate did not share in earnings during the winding up period, but upon the fact that no winding up was necessary or undertaken. The *Guaranty Trust Co.* case partners terminated the partnership on the death of the partner and accounted for the decedent's interest as of that date, the accounting being without reference to events which took place after that date. Thus, the decedent's interest in that case was fixed as of the date of death by the events which had transpired up to that date.

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[8] In other words, it is insisted that the estate must become in effect a partner in order to prevent the partnership's existence from terminating. This insistence cannot be reconciled with the majority's statement that any distinction between partnerships with one survivor and those with more than one is an "unnatural one." (App. C *infra*, at 38a).

In the present cases, as in *Heiner* v. *Mellon*, a winding up period was necessary. The determination of Frank's interest was no mere accounting without reference to events taking place after death. The negotiation of settlements of controversies with the Maritime Commission, which took place after Frank's death, and which settlements affected Frank's partnership interest substantially and adversely, is not an accounting. It is a winding up of partnership business.[9] What the *Guaranty Trust Co.* case partners did after their partner's death could not affect the interest he had at the date of his death. Howard's acts in negotiating the settlements of the various controversies had a profound effect upon Frank's partnership capital account, reducing the book figure of $226,320.90 on January 31, 1947 to $54,895.96, as Judge Parker points out. Frank's partnership interest was not, and could not, have been determined by merely giving accounting effect to facts existing at the date of his death as was the situation in the *Guaranty Trust Co.* case—a winding up and liquidation was necessary.

A sharing of partnership earnings is one situation evidencing the existence of a partnership; it is not the only one. The fact that a partner's capital account is subject to being affected by the winding up process is also evidentiary of partnership existence. The majority below concedes that "pending negotia-

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[9] ". . . liquidation is as much a part of the original venture as its active conduct." Judge Learned Hand in *Ungar* v. *Commissioner*, ... F. 2d ...., (2d Cir. 1957), 1957-1 U.S.T.C. ¶ 9678. See also *Ray* v. *Commissioner*, 12 T.C.M. 1154 (1953), where the Tax Court held that a partnership continued until wound up even though the work on the project for which it was formed was completed and all the profits distributed.

tions, begun before Frank's death but completed later," affected the capital accounts of the partners as of January 31, 1947. (App. C *infra*, at 38a).

The majority takes the view that unless Frank's capital interest was at stake[10] in the continuing physical business of woodworking and ship fitting—as opposed to the winding up of business aspects of the construction work, which had been physically completed at the date of Frank's death—there is no continuing partnership. It is this fallacy[11] which leads to the majority's misinterpretation of the *Guaranty Trust* case and its failure to apply the doctrine of *Heiner* v. *Mellon*.

In *Heiner* v. *Mellon*, the Pennsylvania partnership law, upon which this Court based its decision that the partnership remained in existence for federal tax purposes,[12] provided that upon "dissolution the

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[10] The majority states that "Frank's estate had nothing at risk" in the winding up process even though it recognizes that Frank's capital account was substantially affected by the negotiations completed well after his death.

[11] As recently pointed out by the Fifth Circuit in *Neill* v. *Phinney*, ... F. 2d ...., 1957-2 U.S.T.C. ¶ 9738 (decided June 10, 1957), a joint venture, which is a form of partnership, (See § 3797 (a)(2) of the Internal Revenue Code of 1939) is not completed "when the foreman hangs up his steel hat." The Fifth Circuit points out that the venture is not completed until sums due are adjusted and collected and all claims and accounts verified and disposed of. The negotiation and winding up process required in the present case is described briefly in footnote 2, above. The process is identical with that involved in *Neill* v. *Phinney*, *supra*, where it was held, that the corporate partner continued as a partner in the joint venture even though the corporation had attempted suicide by dissolution, after the physical operations had been completed.

[12] The majority below ignores *Heiner* v. *Mellon* on the ground that it does not involve the termination of the tax year. Apparently this was also the case in the *Guaranty Trust Co.* case as well, in that the question was not contested. See footnote 7, *supra*.

partnership is not terminated, but continues until the winding up of partnership affairs is completed." Maryland law contains the identical provision.[13] Nothing in this Court's opinion in the *Mellon* case suggests that a different result would have been achieved if the decedent partner's estate had not been entitled to share in profits earned or losses incurred during the winding up period.

Accordingly, it is submitted, the majority below has misconstrued the decisions in the *Guaranty Trust Co.* and *Heiner* v. *Mellon* cases.

B. Conflict among the Circuits.

Although the *Guaranty Trust* case would thus not seem to be authority for the principle that the death of a partner terminates the taxable year of a partnership which continues to exist thereafter in order to wind up its business, the Circuit Courts have been in conflict in their interpretation of the case. The Third, Fifth, Sixth, Eighth and Tenth Circuits, as well as the Tax Court,[14] have held that the death of a partner does not terminate the partnership taxable year; the *Guaranty* case is distinguished by these Circuits.[15] The Second Circuit[16] (with a dissent from

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[13] Section 30, Flack's Annotated Code, App. A *infra*, at 2a.

[14] *Girard Trust Co.* v. *U. S.*, *supra*; *Estate of Henderson* v. *Commissioner*, 155 F. 2d 310 (5th Cir. 1946); *Grant* v. *Busey*, 230 F. 2d 290 (6th Cir. 1956); *Commissioner* v. *Estate of Mnookin*, 184 F. 2d 89 (8th Cir. 1950); *Commissioner* v. *Estate of Tyree*, 215 F. 2d 78 (10th Cir. 1954); *Walsh* v. *Commissioner*, 7 T.C. 205 (1946).

[15] In *Grant* v. *Busey*, *supra*, the principle that the death of a partner does not terminate the partnership was apparently considered so clear that the Sixth Circuit did not even cite the *Guaranty Trust Co.* case and *Commissioner* v. *Waldman's Estate*, 196 F. 2d 83 (2d Cir. 1952) which was the only Circuit Court case, prior to the case below, to consider the *Guaranty* case controlling.

[16] *Commissioner* v. *Waldman's Estate*, *supra*.

Judge Augustus Hand) and now the Fourth Circuit below hold to the contrary.

The *Waldman* case expressly recognizes the conflict. The majority there stated:

> "The petitioner relies upon *Henderson's Estate* v. *Commissioner*, 5 Cir., 155 Fed. (2d) 310, *Girard Trust Co.* v. *United States*, 3 Cir., 182 Fed. (2d) 921, and *Commissioner* v. *Mnookin's Estate*, 8 Cir., 184 Fed. (2d) 89, as did the Tax Court, and we make no attempt to distinguish them but, with deference, reach the contrary decision which we think *Guaranty Trust Co.* v. *Commissioner, supra*, requires." *Commissioner* v. *Waldman's Estate, supra*, at p. 85.

Subsequently, the Tenth Circuit in the *Tyree* case refused to follow the *Waldman* case, stating that it did *not* believe "that the *Guaranty Trust Company* case is controlling." *Commissioner* v. *Estate of Tyree, supra*, at p. 80. The Tenth Circuit distinguished the *Guaranty Trust Company* case in these words: "There, the partnership was *concluded* with the death of a partner and if subsequent partnership distributions were not included in the return made for the deceased, it would not be taxable." *Ibid.*

The majority opinion in the court below attempts to distinguish the *Girard Trust*, *Henderson Estate* and *Mnookin* cases on the ground that "in those cases there was a continuation of the sharing of partnership income after the death of a partner."[17] The

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[17] App. C *infra*, at 39a. As above noted, a continued sharing of profit or loss is not indispensable to the continued existence of a partnership. A continued sharing after death is not the "normal situation," as Judge Sobeloff states. Partnership agreements just as frequently, (if not more so) provide for a sharing of earnings

majority opinion in the court below does not even mention the *Tyree* case in the Tenth Circuit in which there was no sharing of profits after the partner's death.[18] Thus, even if the majority's attempt to reconcile its decision with the Third, Fifth and Eighth Circuit decisions is sustained, and the above decisions indicate they cannot be reconciled, there is a clear conflict with the Tenth Circuit.

2. The Decision of the Court of Appeals With Respect to Howard, the Surviving Partner, Is in Conflict With Heiner v. Mellon.

The majority of the Circuit Court below are in error in refusing to follow this Court's decision in *Heiner* v. *Mellon* with respect to Howard's case, regardless of what may be the situation in Frank's case. Like Howard's case, *Heiner* v. *Mellon* involved the rights of surviving partners. On the other hand, the *Guaranty Trust Co.* case involved the tax of the deceased partner. This Court recognized in *Helvering* v. *Enright's Estate*, *supra*, that there may be a distinction between the tax treatment of a deceased partner and that of a surviving partner.[19] And in

by the decedent only up to the date of death. See, for example, the *Tyree* case and *Helvering* v. *Enright*, 312 U. S. 636 (1941) where there was no provision for the decedent partner's estate to share in income earned after his death.

[18] In the *Tyree* case, the decedent partner was entitled to receive the amount of his capital account and the partnership earnings to the date of his death. He was not entitled to share in earnings during the rest of the year after his death.

[19] The *Enright* case involved the interpretation of section 42 of the Revenue Act of 1934 which required that amounts of income accrued up to death should be included in the last return of a decedent. This provision was not in the law governing the present case, having been amended in 1942 by the addition of section 126 to the Internal Revenue Code of 1939. Section 126 generally taxes

Walsh v. *Commissioner*, 7 T.C. 205 (1946), the only decided case (other than the instant one) which considered the tax liability of a surviving partner, the Tax Court squarely held that the *Mellon* case was controlling, regardless of what might be the situation of the deceased partner under the *Guaranty Trust* case.[20] In its opinion in the *Girard Trust Company* case, the Third Circuit described the Tax Court's conclusion in the *Walsh* case as "correct." Accordingly, in following the *Guaranty Trust* case rather than *Heiner* v. *Mellon* with respect to Howard's tax liability, the majority of the Court of Appeals is in error, and is in conflict with the Third Circuit's views. The partnership's taxable year should not be truncated with respect to a surviving partner by the fortuitous death of a partner.[21]

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income earned to date of death to the decedent's estate. Enright was a partner and on his death was entitled, in effect, to receive his capital account, his percentage of accounts receivable and of estimated receipts from the earned portion of unfinished business. He did not share in post mortem profits or losses. This Court required the accrual of the accounts receivable and the earned portion of unfinished business so far as the decedent was concerned and in footnote 9, p. 641, said, "We do not consider or decide whether this accounting for a fractional year may affect the individual returns of surviving partners."

[20] Historically there was, perhaps some justification for a differentiation in the tax treatment of a decedent and a surviving partner, as pointed out by the Tax Court in the *Walsh* case, *supra*, p. 208. However, since section 126 was put into the Internal Revenue Code of 1939 by the Revenue Act of 1942, there appears to be little modern justification for any distinction. As the Third Circuit pointed out in the *Girard Trust* case, a holding that the partnership taxable year terminated with respect to a deceased partner would lead to a result with respect to the survivor which "seems both inescapable and undesirably harsh." (182 F. 2d at 925).

[21] This is so whether or not there is more than one surviving partner, since even the majority of the Court below recognizes that it is "unnatural" to draw a distinction between cases involving a single surviving partner and more than one surviving partner.

3. The Proper Disposition of This Case Involves an Important Question of Law Which Should be Settled by This Court.

This case raises a significant question in the administration of the federal income tax laws. The partnership is an important form of organization in our economy. The latest statistics of the Internal Revenue Service disclose that 958,591 partnership returns involving 2,371,279 partners were filed with the Internal Revenue Service for one year.[22] The partnership is, as well, a type of business organization "commonly employed in small business."[23] The question of the termination of the partnership year will arise upon the death or retirement of a partner, whenever the partners have a taxable year differing from that of the partnership. This question should be finally settled. The quest for certainty becomes even more imperative when the application of erroneous principles can lead to the harsh result of subjecting a taxpayer to tax at high progressive rates upon 23 months of business income because of the coincidental death of a partner.

The differences of opinion among seven circuits in their interpretation of relevant decisions of this Court testify unmistakably to the existing uncertainty and confusion. The latest pronouncement of the majority below adds to the confusion. We are now confronted with a new principle, unbuttressed by any authority, and contrary to existing authority, that a partnership effectually terminates in the eyes of the tax law when sharing of profits ceases, even though the partnership

[22] Statistics of Income, Partnership Returns for Income years ended July 1953-June 1954, Publication No. 369 of the Internal Revenue Service (June 14, 1957) at p. 16.

[23] Sen. Report No. 1622, on H. R. 8300, 83d Cong., 2d Sess., p. 89.

interest necessarily remains in the partnership solution, subject to the negotiation of controversies and the settlement of bona fide claims in the winding up process. In an era when progressive tax rates can reach 87 percent,[24] there should be no confusion which can result in taxing 23 months' income in one year. The results in the Circuit Courts show that only this Court can eliminate the confusion.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari be granted.

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[24] Section 1(c) of the Internal Revenue Code of 1954.

APPENDIX A

STATUTES

Internal Revenue Code of 1939

SEC. 188. DIFFERENT TAXABLE YEARS OF PARTNER AND PARTNERSHIP.

If the taxable year of a partner is different from that of the partnership, the inclusions with respect to the net income of the partnership, in computing the net income of the partner for his taxable year, shall be based upon the net income of the partnership for any taxable year of the partnership (whether beginning on, before, or after January 1, 1939) ending within or with the taxable year of the partner.

Flack's Annotated Code of Maryland
Article 73A

SECTION 25. (Nature of a Partner's Right in Specific Partnership property.)

(1) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

* * * * *

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

SECTION 29. (Dissolution Defined.) The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

SECTION 30. (Partnership not Terminated by Dissolution.) On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

SECTION 31. (Causes of Dissolution.) Dissolution is caused:

(1) Without violation of the agreement between the partners.

* * * * *

(4) By the death of any partner;

* * * * *

SECTION 37. (Right to Wind Up.) Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, however, that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court.

SECTION 42. (Rights of Retiring or Estate of Deceased Partner When the Business is Continued.) When any partner retires or dies, and the business is continued under any of the conditions set forth in Section 41 (1, 2, 3, 5, 6), or Section 38 (2b), without any settlement of accounts between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date

of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by Section 41(8) of this Article.

APPENDIX B

25 T. C. No. 24

THE TAX COURT OF THE UNITED STATES

ESTATE OF FRANK H. KNIPP, deceased, HOWARD F. KNIPP, Executor, *Petitioner*;

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

HOWARD F. KNIPP, *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

Docket Nos. 42545, 50153, 50154.

Filed October 31, 1955.

1. The decedent and petitioner Howard F. Knipp were on the calendar year basis for reporting income, and the partnership, of which they were the sole members with equal rights to share in profits, operated on the basis of a fiscal year ending January 31. The partnership agreement provided, in effect, that if a partner died during a taxable year of the firm his share of the profits would be the amount which he was entitled to receive as "salary". *Held*, that the death of decedent on November 21, 1947, terminated the partnership's taxable year. *Held further*, that one-half of the partnership's profits to the date of death of the decedent, less the amount withdrawn as "salary" is not includible in the gross estate of the decedent as value of a property interest in the earnings of the partnership.

2. The partnership held 11 policies of insurance on the life of the decedent, 10 of which had been assigned to it by the insured. It was the beneficiary of the unassigned policy but the insured had the right to change the named beneficiary. The partnership paid the premiums on all

of the policies. *Held*, that the proceeds of the 10 assigned policies are not includible in gross estate of the decedent under subsections (A) or (B) of section 811(g), I.R.C. of 1939, and that the proceeds of the unassigned policy are a part of the decedent's gross estate under subsection (B).

Randolph E. Paul, Esq., and *Julian N. Stern, Esq.*, for the petitioners.

Paul Waring, Esq., for the respondent.

These consolidated proceedings involve deficiencies in income and estate tax as follows:

Docket No.	*Petitioner*	*Tax*	*Year*	*Deficiency*
42545	Estate of Frank H. Knipp	Estate		$120,980.52
50154	Estate of Frank H. Knipp	Income	1/1/47 to 11/21/47	18,500.36
50153	Howard F. Knipp	Income	1947	351,892.70

Refunds are claimed in Docket Nos. 42545 and 50154.

The issues not conceded on brief or settled by stipulation are:

Docket Nos. 50153 and 50154.

(1) Whether the death of Frank H. Knipp terminated the partnership for income tax purposes.

Docket No. 42545.

(1) Whether the value of the interest of the decedent in the partnership of John C. Knipp & Sons should include the amount of $154,972.05 representing one-half of the partnership income in 1947 prior to his death on November 21, 1947;

(2) Whether the proceeds of certain insurance policies on the life of decedent, totaling $90,512.32, are includible in his gross estate; and

(3) Whether the value of the decedent's interest in the partnership should be reduced by the amount of $4,328.34 as his share of the partnership liability to the United States Maritime Commission for interest as of January 31, 1947.

Findings of Fact.

The facts set forth in the stipulation of facts are so found.

Howard F. Knipp, the petitioner in Docket No. 50153, hereinafter referred to as "Howard", is the executor of the estate of Frank H. Knipp, deceased, his uncle, hereinafter referred to as "Frank", who died testate on November 21, 1947. Howard kept his books and filed his income tax returns for 1947 and 1948 on the calendar year basis. His income tax returns and the estate tax return were filed with the collector of internal revenue for the district of Maryland.

The firm of John C. Knipp & Sons has been engaged in the retail furniture, interior woodwork, and ship-fitting business since 1868. On July 7, 1943, Frank, Howard and John C. Knipp, a brother of Howard, hereinafter referred to as "John", entered into a partnership agreement for the conduct of the firm, hereinafter referred to for convenience as the partnership. Profits and losses of the partnership were to be shared on the basis of 40 per cent to Frank and Howard, and 20 per cent to John. An annual salary of $25,000 each was to be paid to Frank and Howard and $15,000 to John, payable on a monthly basis. Paragraph Eleven of the partnership agreement reads as follows:

> *Eleven.* It is agreed among the partners hereto, anything in this agreement to the contrary notwithstanding, that in the event of any partner's death, the amount to the credit of said deceased partner on the firm's books on February 1, 1943, or on February 1st

in any subsequent year, provided the partnership has run for twelve consecutive months; otherwise the date of settlement shall be as of the prior February 1st, less the amount of his withdrawals over salary, shall be paid to the Executors or Administrators of said deceased partner, and same shall be in full settlement of the deceased partner's interest in said partnership.

The purpose of the provisions was business convenience. The partners had an oral understanding that the capital account of a deceased partner at the start of the fiscal year in which his death occurred would be subject to any adjustments made by the partnership on work completed and reflected in the account.

The agreement did not contain a provision for continuation of the partnership in the event of death of a partner. Under the partnership agreement Frank had no right to share in the partnership earnings for its fiscal year in excess of his contractual drawings unless he survived to the end of the partnership's fiscal year. Similarly, if the partnership income was insufficient to cover the partners' contractual drawings in any year, a partner who died during the year could not be charged with any part of the decrease in net partnership assets and was entitled to his full contractual drawings or "salary."

The partnership kept its books and filed returns on the basis of a fiscal year ending January 31.

John withdrew from the partnership as of August 1, 1945. The settlement agreement entered into with Frank and Howard provided that John's share of profits and losses would be 20 per cent of the profits and losses on contracts outstanding on August 1, 1945, "whether completed, re-negotiated, subject to re-negotiation or in the course of re-negotiation or uncompleted."

On August 1, 1945, the partnership had uncompleted contracts, including contracts with the United States Maritime Commission, hereinafter referred to as "Maritime",

for the fitting of ships, which contracts were subject to renegotiation. On October 30, 1947, Maritime filed a claim against the partnership for $322,461 for progress payments erroneously made for work cancelled on March 8, 1944. The payments were reported in income in the year of receipt. On November 21, 1947, the partnership made a counterclaim for additional amounts due to it for work on ships. The counterclaim was allowed on February 21, 1949, in the amount of $177,733.05 as an offset against the overpayment of $322,461. The balance of $144,727.95 was paid by checks issued in 1949 and 1950 by John C. Knipp & Sons.

After John withdrew from the partnership Frank and Howard continued to operate the business under the partnership agreement of July 7, 1943, except for an oral amendment to provide for an equal division of the profits.

About September 1945 Maritime cancelled further work by the partnership on 10 vessels. Thereafter, the partnership filed a termination claim against Maritime which was still unsettled on November 21, 1947.

In April 1951 "Howard F. Knipp, as partner and as executor of the estate of Frank H. Knipp, deceased partner, and John C. Knipp, as partner, doing business as John C. Knipp & Sons (herein called 'Contractor')" signed a final settlement agreement as of March 6, 1950, with Maritime in respect to a termination claim on the contracts cancelled in 1945. The agreement took into account certain credits to Maritime for supplies which had been taken over by the "Contractor" on the termination of the contracts and progress payments which the "Contractor" had received before the contracts were terminated. In settlement the parties agreed that Maritime had overpaid the "Contractor" by $81,064.09 and that the "Contractor" owed Maritime $16,005.25 for interest on an overpayment made on April 20, 1946, in the amount of $185,560, which overpayment the "Contractor" had repaid in September and October, 1947. The compromise settlement was ap-

proved by the Department of Justice on October 1, 1951. Of the agreed liability for interest, $8,656.67 was for the period to January 31, 1947. Such interest was not claimed as a deduction in the partnership return filed for the year ended January 31, 1947, but was allowed by the respondent as accrued interest in adjusting the net income of the partnership for that period. The amount reported in the estate tax return as the value of Frank's interest in the partnership was not reduced by one-half, or $4,328.34, of such interest of $8,656.67. The capital account of Frank on the books of the partnership was charged as of January 31, 1947, with $4,328.34 for his alleged share of the interest to that date.

On November 21, 1947, the partnership had contracts with Maritime which were subject to profit limitations under the Vinson-Trammel Act. Its work under some of the contracts was completed during the fiscal year ended January 31, 1947. The excessive profits received under the contracts were determined in 1949 or 1950 and were paid by the partnership.

On November 21, 1947, the partnership had unsettled claims for work for Maritime on ships at Savannah, Georgia, and for termination of the contracts as to some of the ships covered by it. The contract price was also subject to adjustment for defective work done after that date. Work on contracts incompleted on November 21, 1947, was continued after that date.

The inventory of the partnership was sold for cash, its machinery and building leased, and its pending contracts assigned to Knipp & Company, a corporation organized on February 1, 1948. The corporation completed the contracts so assigned to it. The partnership bank account was continued after February 1, 1948, in which rental income from a building was deposited.

The capital account of Frank on the books of the partnership had a credit balance of $226,320.90 on January 31, 1947, and $221,845.63 on the date of his death on November

21, 1947. Various entries in the account thereafter reduced the balance to $54,875.96 on January 31, 1949.

The will of Frank provided for cash legacies of $137,000, including $50,000 to Howard, who was named residuary legatee. All of the legacies were paid except the one to Howard. The will provided that if the estate was not sufficient to pay all of the legacies in full, the legacies were to abate proportionately.

At the time of his death on November 24, 1947, Frank had 11 insurance policies of the value of $[illegible]21.32 outstanding on his life, all of which, except one issued by the Sun Life Assurance Company of Canada of the value of $5,000, were assigned to John C. Knipp & Sons in or prior to 1931. The policy issued by the Sun Life Assurance Company of Canada was payable to the partnership. It was assigned to the Baltimore National Bank by Frank and the partnership on May 16, 1939. Under the assignment the bank had "all rights as to the cash surrender values, loans, dividends, and all other handling of policy without consent or signature of the insured". The policy was reassigned on July 31, 1945, by the bank to the partnership. The insured had the right to change the beneficiary at any time prior to his assignment of the policy. The cash value of all of the policies was set up on the books of the partnership as assets and the partnership used the policies as collateral for loans.

The partnership paid the premiums on the policies as they became due. The premiums paid on the policies before and after January 10, 1941, were $56,405.36 and $21,073.35, respectively.

The premiums were considered an expense of the partnership and deducted from gross income except for income tax purposes. None of the premiums was charged to the capital or drawing account of the partners. The increase of cash surrender value of the policies each year was considered income of the partnership, except for income tax purposes, and the value of the insurance as an asset of the partnership was correspondingly increased.

The income of the partnership from February 1, 1947, to the death of Frank on November 21, 1947, was $351,344.09. Included in the amount was $18,887.50 for "salary" actually withdrawn by Frank prior to his death, and $1,812.50 to which he was entitled as "salary" at the time of his death.

The return filed by the partnership for the fiscal year ended January 31, 1947, reported ordinary net income of $309,027.21, distributable in equal amounts to Frank and Howard. The return was signed by Howard.

A partnership return was filed for the fiscal year ended January 31, 1948, showing ordinary net income of $450,158.91, distributable, "In accordance with partnership agreement," $429,458.91 to Howard and $20,700 to the estate of Frank. The return was signed by Howard. A partnership return was also filed for the fiscal year ended January 31, 1949, showing ordinary net income of $11,754.33, all distributable to Howard "In accordance with partnership agreement".

The income tax return of Frank for the period January 1, 1947, to November 21, 1947, reported the amount of $154,513.61 as the decedent's distributive share of the income of the partnership for the fiscal year ended January 31, 1947. Fiduciary income tax returns were filed for the estate of Frank for the period November 21, 1947, to December 31, 1947, and for the calendar year 1948. The return for the period in 1947 reported no partnership income. The return for 1948 reported net income of $25,542.37, including $20,700 of income from the partnership, and tax liability of $8,881.70, which was paid. In his determination of the deficiency against Frank for the period ended November 21, 1947, respondent increased taxable income by the amount of $20,700 for "salary" received from the partnership during the taxable period.

Frank's interest in the partnership was included in his estate tax return at a value of $54,875.96. The 11 life insurance policies of the value of $90,512.32 were reported in the return but not included in the gross estate.

The adjustments made by the respondent in determining the deficiency in estate tax included the following amounts as additions to the net estate:

Increased value partnership's interest	$ 52,848.61
Salary owed by partnership	1,812.50
Partnership income to time of death	[1]84,948.54
Insurance	[2]90,512.32

[1] The parties now agree that the correct amount is $154,972.05.

[2] Included under section 811(g), I.R.C. of 1939, on the ground that the premiums were paid indirectly by the decedent. The parties stipulated that the value was $90,521.32.

In his return for the calendar year 1948 Howard reported income of $405,646.60 from the partnership for the fiscal year ended January 31, 1948. In his determination of the deficiency against Howard for 1947 respondent held that the death of Frank on November 21, 1947, dissolved the partnership and terminated its accounting year as of that date, and, accordingly, included in his income, in addition to his distributive share of the profits of the partnership for the fiscal year ended January 31, 1947, the amount of $330,644.09 representing all of the income of the partnership for the period from February 1, 1947, to November 21, 1947, less $20,700 distributable to Frank, and the amount of $47,087.35 as income from the operation of the business as a sole proprietorship for the remainder of the calendar year 1947.

OPINION.

JOHNSON, *Judge:* Frank and Howard, members of the partnership, reported income on the basis of a calendar year. The partnership's taxable year ended on January 31. Involved in the proceedings relating to income tax is the basic question of whether the death of Frank on November 21, 1947, terminated the partnership and its accounting year for income tax purposes.

Petitioners concede that the death of Frank worked a dissolution of the partnership but, relying primarily on *Heiner* v. *Mellon*, 304 U. S. 271, as to Howard, and distinguishing *Guaranty Trust Co.* v. *Commissioner*, 303 U. S. 493, as to Frank, contend that the firm continued for liquidation purposes without a break in its taxable year until at least January 31, 1948. So arguing, petitioners say that Frank's "salary"[1] of $20,700 and Howard's share of the profits of the business are not taxable until 1948.

Respondent held in his determination of the deficiencies and asserts on brief that the death of Frank terminated the partnership for income tax purposes, with the result that the "salary" of Frank, which the executor of his estate reported as income taxable in 1948, constitutes income taxable for the period January 1, 1947, to November 21, 1947, and that Howard is taxable in 1947 on not only his distributive share of the profits of the partnership to November 21, 1947, but, as sole proprietor, on the earnings of the business for the remainder of the calendar year 1947, contrary to the view of Howard, who included in his return for the calendar year 1948 all of the profits of the partnership for the fiscal year ended January 31, 1948. Respondent says that the *Guaranty Trust Co.* case controls the "salary" question as to Frank, and that that case and paragraph Eleven of the partnership agreement support his position as to Howard.

In *Guaranty Trust Co.*, *supra*, the decedent, who filed his returns on the basis of a calendar year, died on December 16, 1933, while a member of a partnership whose fiscal year ended on July 31. The agreement of copartnership was such that the decedent's death dissolved the partnership, ended his right to share in future profits, and fixed the date for an accounting of earnings by the survivors. Later, the surviving partners formed a new partnership

[1] The partnership agreement classified the amount as salary. For tax purposes the amount constitutes a share of the profits of the business.

and took over the business as of the time of the decedent's death, with a fiscal year ending July 31, 1934, and from year to year thereafter. In January and February 1934, the decedent's executors received the decedent's share of the profits of the firm for the period from August 1, 1933, to December 16, 1933. The executors omitted the profits, so distributed, in the return filed for the decedent for the taxable period ended with his death, and the Commissioner included it in determining the deficiency. No contention was made by the taxpayer that the short period was not a "taxable year" of the partnership within the meaning of section 182(a) of the Revenue Act of 1932, and the Court remarked that if such a contention had been made, it could not have prevailed. The issue before the Court was whether the terms "any taxable year of the partnership ending within his taxable year"[2] appearing in section 182(a), *supra*, precluded inclusion in the income of the decedent for the short period ending with his death, his share of the profits of the partnership for that period, and also the full fiscal year ending on July 31. The Court held that it did not.

In *Heiner* v. *Mellon*, *supra*, one of the three equal partners in two partnerships died in 1919. Liquidation of the business continued thereafter to 1925, when the assets were sold in bulk. No new partnership agreements were entered into by the survivors. The partnership returns filed for 1920 listed the estate of the decedent as a member of the partnerships. The accounting period of the partnerships and the partners was the calendar year. The question was whether the surviving partners were taxable in 1920 on their distributive shares of the partnerships for that year. The Court said that dissolution of the partnerships by the death of one of the partners did not affect the liability of the survivors for tax on their distributive shares

[2] A phrase of like import appears in section 188 of the Internal Revenue Code of 1939.

of the profits in the following year. It then pointed out that:

> * * * Although dissolved, the partnerships and the business continued, since, as stated in the Pennsylvania Uniform Partnership Act: "On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed." * * *

The Commissioner recognizes that the death of a partner does not "in itself" terminate a partnership for income tax purposes; that "Ordinarily, a partnership will be treated as continuing where the business of the partnership, or a substantial portion thereof, is continued," and that the returns of the continuing partnership should be filed on the basis previously established. Rev. Rul. 144, 1953-2 C.B. 212, 213. He does not require application of the ruling to changes occurring prior to January 1, 1954. Rev. Rul. 54-26, 1954-1 C.B. 153. In another ruling, Rev. Rul. 54-55, 1954-1 C.B. 153, with like conditions on retroactivity, the Commissioner held that where the estate of a deceased partner continues the decedent's interest during the winding-up period, the partnership continues during that period of liquidation.

Similar questions have been before this Court. In *Mary D. Walsh*, 7 T.C. 205, where there was no provision for continuation of partnership interests, we held that the death in 1939 of one of the three partners did not affect the taxable year of the partnership as to the surviving partners during the liquidation period.

Dissolution and complete liquidation of a partnership, accounting on a fiscal year basis, occurred within the calendar year 1941 of a partner in *Anne Jacobs*, 7 T.C. 1481, and we held that her distributive share of the profits for the fractional taxable year of the partnership was includible in income for 1941. See also *Louis Karsch*, 8 T.C. 1327.

By prior agreement, the partnership interest of a deceased partner continued in *Estate of Samuel Mnookin*, 12

T.C. 744, affd. 184 F. 2d 89. There, following *Henderson's Estate* v. *Commissioner*, 155 F. 2d 310, reversing 4 T. C. 1001, we held that the accounting period of the partnership did not end with the death on December 1, 1943, of a partner and that the decedent's share of the earnings of the business for the period of it's fiscal year from June 1, 1943, was not includible in his return for the taxable period January 1, 1943, to December 1, 1943. The case was cited in support of the conclusion reached in *Girard Trust Co.* v. *United States*, 182 F. 2d 921, on facts materially the same.

Estate of Isadore Waldman, 15 T. C. 596, revd. 196 F. 2d 83, involved facts similar to the *Mnookin* case. There, under the partnership agreement, the heirs or estate of a deceased partner could elect within 60 days to continue as a partner. The executor made a timely election but the surviving partners rejected it. Thereafter an agreement was reached under which the partnership was dissolved and liquidated as of January 31, 1946, a date within the partnership's fiscal year ending June 30. We held that the death of the decedent on November 22, 1945, did not end the taxable year of the partnership; that such year continued to January 31, 1946, when the partnership terminated, and that no part of the net income of the partnership for the period July 1 to November 22, 1945, was includible in the final return of the decedent for the period January 1 to November 22, 1945.

In *Estate of Joseph E. Tufee*, 20 T. C. 675, affd. 215 F. 2d 78, like in *Estate of Samuel Mnookin*, *supra*, there was an agreement for continuation of the partnership, and we held, following the *Mnookin* case and this Court's ruling in the *Waldman* case, *supra*,[3] that the death of a partner did not terminate the taxable year of the partnership as to him.

The cases before us here involve both the interest of the deceased partner and the sole surviving partner, without an express agreement for continuing the business and an unusual provision as to profits for the partnership tax-

[3] Nonacquiescense withdrawn, 1954-2 C.B. 6.

able year in which a partner should die. The proceeding involving Frank will first be considered.

The partners had a statutory right to select a taxable year for the partnership different from their own, section 188, coupled with a requirement in section 182, *supra*, that their shares of the earnings of the business for the taxable period so selected be included in their individual income tax returns for the taxable year in which the partnership year ended, whether or not distributed. They also had an unrestricted right to agree upon rates of participation in the profits of the enterprise.

The partners here agreed upon withdrawals of profits, designated as salary, at the rate of $25,000 per year for each, payable on a monthly basis. Paragraph Eleven of the partnership agreement expressly provided that upon the death of a partner there should be paid to his estate in full settlement of the decedent's interest the amount to his credit at the beginning of the partnership year, less withdrawals over "salary." The "salary" payable to Frank prior to his death was $20,700, of which $18,887.50 was actually paid to him.

The effect of the agreement of the partners here was to fix the distributive share of a deceased partner in the partnership year in which his death occurred at an amount equal to the "salary" payable to him for the period prior to his death. So limited by express agreement, no right passed from the decedent to his estate to receive any amount for inclusion in a fiduciary income tax return for a subsequent period. See section 126(a)(1)(A), I.R.C. of 1939. The death of Frank eliminated the partnership as a continuing source of income to him as effectively as did the death of the partner in the *Guaranty Trust Co.* case, *supra*.[4] Howard so construed the agreement, as shown by the individual tax return he filed for 1948 in which he reported as taxable to him all of the ordinary net income

[4] See comment of the United States Court of Appeals, Commissioner v. Guaranty Trust Co., 89 F. 2d 693.

of the partnership for its full accounting period, less the $29,700 distributable to Frank before his death.

Frank's death thus not only fixed the date of computation of his distributive share of the profits, but the amount thereof. The amount was earned during Frank's lifetime, and no reason appears for delaying the reporting of such income until the end of an additional period, during which operations could not affect the amount of the share.

While there was no controversy in the *Guaranty Trust Co.* case as to the time of termination of the partnership year,[7] the rationale of the decision there, applied to the peculiar factual situation here, requires a conclusion that the partnership's taxable year as to Frank ended on the date of his death. Accordingly, we sustain the respondent on this point of the issue.

The peculiar facts of the case do not require a different conclusion as to Howard, the surviving partner.

The *Mellon* case, *supra*, is clearly distinguishable. There, the interest of the deceased partner continued with a right of his estate to share equally with the two surviving partners in the profits of the business during the liquidation period of about five years after dissolution. That situation did not prevail here.

Petitioners refer us to various provisions of the Uniform Partnership Act, in force in Maryland, which, they say, required liquidation proceedings and, therefore, a continuation of the business with usual tax consequences until the close of the fiscal year, even though only one partner survived.

We agree that some sort of a proceeding or transaction was necessary to bring about a termination of the partnership as a going business. Complete liquidation of the partnership involved in the *Guaranty Trust Co.* case, *supra*, and, therefore, termination of the taxable year, resulted from the transfer of the business, as of the date of

[7] See Girard Trust Co. v. United States, supra; Estate of Isidore Waldman, supra; and Estate of Joseph E. Tyree, supra.

death of the decedent, to a new partnership organized by the surviving partners. The means employed here were equally as effective to terminate the partnership for income tax purposes as of the date of death of Frank.

The partnership agreement not only gave Howard the right to all profits of the business after the death of Frank, but all of the net income earned prior thereto during the fiscal taxable year selected by the partners, except "salary" distributable to Frank before his death. The agreement was so construed by Howard in reporting partnership income and making return of his and the estate's income, and no contrary contention is being made here by petitioners. The shares of partnership net income to Frank's death were thus determinable under the agreement and continuation of the business was unnecessary to determine distributive shares of partners, since operations could be only for the account of Howard.

Howard was not only entitled to receive all of the net income after Frank's death, but under the partnership agreement concurrently with that event acquired all of the interest of Frank, and with it the assets of the business, for an amount determinable under paragraph Eleven of the instrument. But petitioners point out that Frank's interest was subject to debts of the partnership created while he was a partner. Such obligations would constitute claims against the estate of Frank, and, if allowable, would reduce by a corresponding amount the cost to Howard for Frank's interest. Any rights of creditors against the surviving partner could be pursued against him as the successor of the business.

To conclude, our opinion is that the partnership agreement settled all matters between the partners and terminated the taxable year of the partnership as to Howard at the time of Frank's death. Accordingly, the determination of respondent as to Howard is sustained.

In computing the value of the decedent's partnership interest for inclusion in his gross estate, respondent included an amount as the value of the decedent's share of

the net income of the business for the period of its taxable year ending with his death. The parties agree that if the value should include earnings of Frank from that source, the correct amount is $154,972.05, representing one-half of net income of the partnership for the period, less $20,700 distributable as "salary."

The amount in controversy was not reported in the final income tax return of Frank, and, other than the $20,700, no amount was included by respondent in determining the deficiency. The income tax return of Howard for the calendar year 1948 included an amount for all of the net income of the partnership for the fiscal year ended January 31, 1948, less the $20,700 of earnings distributable to Frank for the period prior to his death. Respondent concedes on brief that Howard, under the partnership agreement, is taxable on all of the earnings for that period, and disagrees with petitioners only on the periods the profits are subject to tax.

While recognizing that the agreement entered into by the partners to determine their distributive shares of the earnings of the business makes the amount taxable to Howard and, therefore none taxable to Frank, respondent's action has placed him in a position of holding, in effect, that Frank had an interest in the earnings as property at the time of his death. He says that the value of the interest at death is not dependent upon the recipient of the earnings, while the gist of petitioners' contention seems to be that if Howard is taxable on the earnings Frank could not have had an interest in them at his death. Respondent says our conclusion is controlled by *Estate of Robert R. Gannon*, 21 T.C. 1073. Petitioners disagree with that case and distinguish it.

The agreement in the *Gannon* case required a valuation of the net assets of the partnership at the beginning of each year and an equal proportionment among the three partners as their investment in the business. Other provisions provided that on the death of a partner the survivors could elect to continue the business or liquidate it.

If continued under the option, the estate of a deceased partner was to receive for the interest of the decedent at his death the amount previously fixed by all of the partners as the value at the beginning of the year; nothing for earnings to the date of death. If the survivors elected to liquidate the business, the estate of a deceased partner was to receive one-third of the proceeds of liquidation. The survivors elected to continue the business and, thereafter, in accordance with the partnership agreement, paid to the estate the sum agreed upon as the value of the decedent's interest at the beginning of the partnership year. Nothing was paid to the estate for profits earned by the business to the date of the decedent's death. Our conclusion under the circumstances was that the decedent's share of the earnings of the partnership for the partnership year prior to his death should be included in the value of the decedent's interest for estate tax purposes. Distinguishable facts are present here.

The two partners in the Knipp partnership saw fit for business convenience to qualify their rights to earnings. If they survived the partnership year, each was to receive one-half of the profits as his distributive share, and if one died during the year, as was the case, his distributive share was, by the occurrence of that event, to be limited to the earnings distributable as "salary." The right to a share of earnings in excess of "salary" was thus wholly contingent upon survival to the end of the accounting period, and until that contingency ceased to exist no partner had a vested interest in profits already earned. Frank never had during the crucial period more than a potential right to profits in excess of the amount designated as salary, and his death prevented that right from maturing. Not being entitled to any part of the $154,972.05 of profits at the time of his death, he had no interest to value for inclusion in his gross estate.

Death of a partner in the *Gannon* case did not, as here, completely destroy an unmatured right to a distributive

share of earnings. Until the surviving partners exercised their option there remained the probability that liquidation would occur with the accompanying right of the estate of the deceased partner to profits. Here, liquidation was mandatory for the benefit of the survivor as to profits. The right of the decedent in the *Gannon* case to earnings was subject to a condition subsequent, and not a condition precedent, as here.

The difference in the facts in these proceedings call for a different conclusion. Accordingly, we find that no amount is includible in the estate of Frank as value for property interest in earnings of the partnership to the date of his death.

Under the settlement agreement entered into in 1951 with Maritime the partnership paid an amount for interest on an overpayment made in 1946. Of the amount paid, $8,656.67 was for interest accrued prior to January 31, 1945. One-half of the amount was charged to Frank's capital account as of January 31, 1947, and was allowed as a deduction by the respondent in determining the net income of the partnership for the year ended on that date. Notwithstanding such recognition of the amount as an accruable expense of the partnership, respondent now says on brief that the amount was not accruable prior to October 1, 1951, the date on which the Attorney General accepted the partnership's offer of settlement and requested payment of the interest, and that as the expense should have been borne in its entirety by Howard under paragraph Eleven of the partnership agreement the value of Frank's interest in the partnership for inclusion in gross estate should be increased by the amount of $4,328.34 charged to his capital account.

The action of respondent in allowing the amount of interest as a deduction in computing the net income of the partnership for the year ended January 31, 1947, infers a determination that liability to pay interest existed at all times after the overpayment was made by Maritime in

April 1946. The liability to pay was sufficient to accrue the interest at the end of the year as a deductible expense. No reason appears, under the circumstances, for not adjusting the capital account of Frank to reflect the accrued liability. Accordingly, we sustain the petitioners on this issue.

At the time of Frank's death the partnership was the beneficiary of 11 policies of insurance on his life, the proceeds of which, amounting to $90,512.32, the respondent included in the decedent's gross estate under the provisions of section 811(g) on the ground that the premiums were paid indirectly by the decedent. On brief respondent relies upon section 811(g)(2), set forth, in part, in the margin,[6] which was included in the Internal Revenue Code of 1939 by section 404(a) of the Revenue Act of 1942. Specifically, he says that proceeds of the insurance are includible in the gross estate of the decedent because the premiums were paid directly or indirectly by the decedent, and that at the time of his death the decedent possessed incidents of ownership exercisable either alone or in conjunction with another person.

The parties agree that all of the policies were assigned to the partnership with the exception of the one issued by the Sun Life Assurance Company of Canada. As to it, respondent says its value is includible in gross estate on an additional ground, namely, that the assured retained

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[6] SEC. 811. Gross Estate.

* * * * * * *

(g) Proceeds of Life Insurance.—

* * * * * * *

(2) Receivable by Other Beneficiaries.—To the extent of the amount receivable by all other beneficiaries as insurance under policies upon the life of the decedent (A) purchased with premiums or other consideration paid directly or indirectly by the decedent, in proportion that the amount so paid by the decedent bears to the total premiums paid for the insurance, or (B) with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. * * *

the right to change the beneficiary. Petitioners' reply to that contention is that the right to change the beneficiary was not retained in the assignment of the policy to the bank and when the bank reassigned the policy to the partnership the latter acquired the right to change the beneficiary.

The assignment to the bank as security for a loan was a contract separate and distinct from the contract of insurance. *New York Life Insurance Co.* v. *Dunlevy*, 214 F. 1, affd. 241 U.S. 518. The partnership, as the designated beneficiary of the policy, had no more than an expectancy under the insurance, which it assigned to the bank, whose economic interest in the policy never exceeded the amount of the partnership's indebtedness to it. The partnership never had the right to change the beneficiary and, therefore, could not assign it. Upon payment of the debt to the bank its interest in the policy ceased and its reassignment to the partnership obviously was merely to transfer such rights as it had received from the partnership as assignee. Never having had a power of appointment over the policy, the partnership received none under the bank's reassignment. In short, the bank's transfer merely placed the parties where they stood before the first assignment was made. As the assured, decedent had the right to change the beneficiary, and that right continued to the time of his death.

The right of decedent to change the beneficiary was an incident of ownership and the proceeds of the policy are includible in gross estate under subsection (B) of section 811(g)(2). *Estate of Judson C. Welliver*, 8 T.C. 165; *Estate of Eugene F. Sexton*, 12 T.C. 569; *Estate of Emil M. Goldblatt*, 16 T.C. 204; *Fried* v. *Granger*, 105 F. Supp. 564, affd. 202 F. 2d 750.

The parties agree that the other 10 policies of insurance constituted assets of the partnership at the time of the decedent's death. Respondent included the proceeds of the insurance in gross estate upon the ground that the

premiums were paid indirectly by the decedent. Such insurance is includible in gross estate under subsection (A) of section 811(g). On brief, while adhering to that view, he asserts that the proceeds are also includible under subsection (B), a provision independent of subsection (A). Petitioner argues that neither of the provisions requires the inclusion of the insurance as property possessed by Frank at his death. Thus, the difference between the parties is whether respondent's determination is sanctioned by either of the subsections.

Petitioner says that the answer to respondent's action under subsection (A) is found in what we said in *Estate of George Herbert Atkins*, 2 T.C. 332. Respondent seeks to distinguish that case upon the ground that it was decided under the statute before the amendment by the Revenue Act of 1942.

The precise question in the *Atkins* case was whether the policies of insurance held by and payable to a partnership on the life of the deceased partner were "taken out by the decedent upon his own life," the premiums having been paid by the partnership. In deciding that question we discussed at considerable length the interest of a partner in firm assets and concluded that the funds used to pay the premiums constituted partnership property and that:

> * * * the decedent did not actually pay, directly or indirectly, any part of the insurance premiums with funds belonging to him. * * * It [the partnership] chose to invest some of its funds in acquiring an asset, viz., the three insurance policies. It had full control over them and all legal incidents of ownership. * * * [p. 342]

So concluding we decided that the insurance was taken out by the partnership rather than by the decedent upon his own life. While the death in that case occurred in September 1939, and the issue was controlled by the stat-

nte then in effect, the conclusion as to the payment of the premiums was reached in the light of the amendment made by section 404 of the Revenue Act of 1942.

The purpose of the provision was to prevent avoidance of the estate tax. H. Rept. No. 2333, 77th Cong., 2d Sess., p. 162; S. Rept. No. 1631, 77th Cong., 2d Sess., p. 235. There is no indication here of a plan to avoid estate tax. To the contrary, the acquisition of the insurance appears to have been nothing more than the purchase of a partnership asset in the ordinary course of business. The funds so used were partnership property and the decedent's interest in the partnership was no more than his share of the profits and surplus, as defined in the partnership agreement. Flack's Ann. Code of Maryland, article 73A, sections 8 and 26.

Respondent quotes, without discussion, from Regulations 105 to the effect that a decedent pays the premiums if payment is made by a corporation which is his alter ego, or by a trust, the income from which is taxable to him. Like statements appear in the Committee reports, *supra*. There is no such similarity here, for Frank's interest in profits never exceeded 50 per cent and Howard had at all times an equal voice as to partnership matters.

No reason appearing for departing from the reasoning of the *Atkins* case, *supra*, on this point, we conclude that the insurance proceeds are not includible in the gross estate under subsection (A).

Respondent relies upon the rationale of *Commissioner* v. *Treganowan*, 183 F. 2d 288, reversing 13 T.C. 159, followed in *Estate of William E. Edmonds*, 16 T.C. 110, and *Estate of Emil M. Goldblatt*, *supra*, to support his present view that the decedent possessed incidents of ownership in the insurance at the time of his death.

In the *Treganowan* case the New York Stock Exchange, of which the decedent was a member at the time of his death, had a plan to pay $20,000 to, in general, the family or heirs of a deceased member. A member's right to desig-

nate a beneficiary under the plan, held to be insurance, was limited to the members of the designated group. The power of a member to sell his seat on the Exchange, with the insurance rights that would go with it, was regarded as sufficient to make him the owner of the insurance for the purposes of subsection (B). In the *Goldblatt* case it was stipulated that the "decedent possessed all of the incidents of ownership in both policies to the date of his death" and, therefore, the question here was not before us for decision.

Respondent concedes that the insurance was an asset of the partnership and that Frank had no rights in the policies other than those flowing from his partnership interest. The inference from such concessions is that Frank, in his individual capacity, had no incidents of ownership in the policies, and respondent cites no specific fact of ownership.

One of the conclusions reached in the *Atkins* case, *supra*, in deciding that the policies of insurance were taken out by the partnership rather than by the decedent there, was that the firm had complete control over them and held all of the incidents of ownership. The material facts here are the same. Nothing in the *Treganowan* case requires a contrary conclusion. Decedent, as an individual, had no power to exercise rights of ownership over the assets and sale of his partnership interest would not have transferred any rights in specific assets of the firm. *United States* v. *Shapiro*, 178 F. 2d 459. Accordingly, we hold that the proceeds of the 10 policies do not constitute assets of Frank's estate.

Decisions will be entered under Rule 50.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7302.

ESTATE OF FRANK H. KNIPP, HOWARD F. KNIPP, EXECUTOR, *Petitioner and Cross-Respondent*, and

HOWARD F. KNIPP and ESTATE OF FRANK H. KNIPP, HOWARD F. KNIPP, EXECUTOR, *Petitioners*,

vs.

COMMISSIONER OF INTERNAL REVENUE, *Respondent and Cross-Petitioner*, and

COMMISSIONER OF INTERNAL REVENUE, *Respondent*

ON CROSS-PETITIONS TO REVIEW THE DECISIONS OF THE TAX COURT OF THE UNITED STATES.

THIS CAUSE came on to be heard on the transcript of the record from The Tax Court of the United States, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the decisions of the said The Tax Court of the United States, in this cause, be, and the same are hereby, affirmed.

April 16, 1957.

SIMON E. SOBELOFF
Circuit Judge, Fourth Circuit.

Filed
Apr 10 1957
R. M. F. WILLIAMS, JR.
Clerk

A true copy,
Teste:

RICHARD M. F. WILLIAMS, JR., *Clerk*,
U. S. Court of Appeals for the
Fourth Circuit.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7302

ESTATE OF FRANK H. KNIPP, HOWARD F. KNIPP, EXECUTOR,
Petitioner and Cross Respondent, and

HOWARD F. KNIPP and ESTATE OF FRANK H. KNIPP, HOWARD F. KNIPP, EXECUTOR, *Petitioners*,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent and Cross-Petitioner, and

COMMISSIONER OF INTERNAL REVENUE,
Respondent

ON CROSS-PETITIONS TO REVIEW THE DECISIONS OF THE TAX COURT OF THE UNITED STATES.

Upon the motion of the attorney for the Estate of Frank H. Knipp and with the consent of the Commissioner of Internal Revenue, the judgment hereinbefore entered on April 10, 1957, is hereby amended to include the following:

"The case of Estate of Frank H. Knipp, Howard F. Knipp, Executor, v. Commissioner of Internal Revenue (Tax Court Docket No. 42545), is remanded, however, in order that the Tax Court may allow proper deductions and redetermine the resultant estate tax liability of the Estate of Frank H. Knipp. For this purpose the Tax Court is further directed to defer its determination of such estate tax liability until the expiration of the time allowed for filing a petition for certiorari, the denial of a petition for certiorari or upon the expiration of thirty days from the date of issuance of a mandate of the Supreme Court in the

cases of Estate of Frank H. Knipp, Howard F. Knipp, Executor, vs. Commissioner of Internal Revenue (Tax Court Docket Nos. 42545 and 50154)."

JOHN J. PARKER
U. S. Circuit Judge.

MORRIS A. SOPER
U. S. Circuit Judge

SIMON E. SOBELOFF
U. S. Circuit Judge

Filed
Apr 30 1957
R. M. F. WILLIAMS, JR.
Clerk

A true copy,
Teste:

RICHARD M. F. WILLIAMS, JR., *Clerk*,
U. S. Court of Appeals for the
Fourth Circuit.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 7302.

ESTATE OF FRANK H. KNIPP, HOWARD F. KNIPP, EXECUTOR, *Petitioner and Cross-Respondent*, and
HOWARD F. KNIPP and ESTATE OF FRANK H. KNIPP, HOWARD F. KNIPP, EXECUTOR, *Petitioners*,

versus

COMMISSIONER OF INTERNAL REVENUE, *Respondent and Cross-Petitioner*, and
COMMISSIONER OF INTERNAL REVENUE, *Respondent*

ON CROSS-PETITIONS TO REVIEW THE DECISIONS OF THE TAX COURT OF THE UNITED STATES.

(Argued November 26, 1956. Decided April 10, 1957.)

Before PARKER, Chief Judge, and SOPER and SOBELOFF, Circuit Judges.

Carolyn E. Agger (Paul Weiss, Rifkind Wharton & Garrison, and Julius M. Greisman, on brief) for Petitioners and Cross Respondent, and L. W. Post, Attorney, Department of Justice (Charles K. Rice, Assistant Attorney General; Lee A. Jackson, and Robert M. Anderson, Attorneys, Department of Justice, on brief) for Respondent and Cross-Petitioner.

SOBELOFF, Circuit Judge:

The principal problem of this case relates to the proper time for taxing partnership income earned in the year of the death of one of the partners.

A partnership is not a taxable entity under our internal revenue laws, but it has a taxable year for accounting purposes and is required to make an information return, which becomes the basis for computing the partners' individual income. As the partnership fiscal year may be different from that of the individual partners, the law (U. S. Internal Revenue Code of 1939, Sec. 188, 26 U.S.C.A. Sec. 188) undertakes to deal specifically with this situation. The controversy here hinges upon the proper application of this section, which provides that where the partnership taxable (fiscal) year is different from that of the individual partner, he shall include in the net income for his taxable year his share of the partnership net income for any partnership taxable year which ends during his individual tax year.[1]

In the instant case the partnership had a fiscal year ending January 31, while the partners were on the calendar year basis. Hence, for a number of years, by the operation of Section 188, the individual partners paid income tax on their respective shares of partnership income only for that partnership year which closed during the calendar year. Thus, in reporting 1946 income, each partner included his share of partnership income for the fiscal year which began February 1, 1945, and ended January 31, 1946. Partnership income earned during the remaining eleven months of 1946 pertained to the fiscal year ending January 31, 1947,

[1] "If the taxable year of a partner is different from that of the partnership, the inclusions with respect to the net income of the partnership, in computing the net income of the partner for his taxable year, shall be based upon the net income of the partnership for any taxable year of the partnership (whether beginning on, before, or after January 1, 1939) ending within or with the taxable year of the partner. 53 Stat. 71." (26 U.S.C.A. Sec. 188)

and was reported in the individual returns for the calendar year 1947.

Our decision is required as to whether, as the Commissioner of Internal Revenue contends, the death of a partner on November 21, 1947, terminated the partnership for income tax purposes as of that date so as to make taxable as 1947 income the partners' respective shares of partnership income which accrued from February 1, 1947, to November 21, 1947. The alternative treatment, for which the taxpayers are here striving, is that the partnership should be deemed to have continued for income tax purposes, despite the partner's death on November 21, 1947, until February 1, 1948, the end of the normal partnership fiscal year. In that case, the income should be taxed as 1948 income.

For many years the firm of John C. Knipp and Sons had been engaged in the business of retail furniture, interior woodwork, and shipfitting. Since 1945 the business had been conducted by two partners, Howard F. Knipp and his uncle, Frank H. Knipp; and by the partnership agreement, each made a regular monthly withdrawal, which was called "salary," at the rate of $25,000.00 annually. Profits over and above salary, as well as losses, were shared equally, but were not distributed until the conclusion of the partnership's fiscal year the following January 31.

A highly important provision of the partnership agreement, paragraph 11,[2] required that to become entitled to

[2] "*Eleven.* It is agreed among the partners hereto, anything in this agreement to the contrary notwithstanding, that in the event of any partner's death, the amount to the credit of said deceased partner on the firm's books on February 1, 1943, or on February 1st in any subsequent year, provided the partnership has run for twelve consecutive months; otherwise the date of settlement shall be as of the prior February 1st, less the amount of his withdrawals over salary, shall be paid to the Executors or Administrators of said deceased partner, and same shall be in full settlement of the deceased partner's interest in said partnership." (Agreement of Co-Partnership between Frank H. Knipp, Howard F. Knipp and John C. Knipp, July 7, 1943.)

share in any fiscal year's profits, a partner must have survived the end of that year. On the death of a partner, he and his estate would have no right to any part of the profits of the current fiscal year beyond the amount of salary paid or due him up to the time of his death. Settlement of his interest in the partnership assets was to be made by reference to the capital accounts as of the February 1 prior to death. It is necessary to note the effect of this unique provision, whereby a partner lost all participation not only in profits accruing after his death, but even in such profits as had been earned during the portion of the fiscal year in which he lived and contributed to the business.

On November 21, 1947, Frank Knipp died, thereby terminating his and his estate's interest in partnership profits earned since the preceding January 31, except the $20,700.00 of salary which had been paid or become due him before his death. Frank's capital account as of the end of the last fiscal year preceding his death (January 31, 1947) had a credit balance of $226,320.90. This was subsequently reduced to $54,875.96 by May 19, 1949, when his estate tax return was filed. The reduction was occasioned by settlement and renegotiation of certain government contracts. These renegotiations had begun prior to Frank's death.

When the usual partnership information return had been duly filed for the fiscal year ending January 31, 1947, it showed a net income of $309,027.21 distributable in equal shares to Frank and Howard. The individual tax return for Frank's 1947 income (filed by his executor) included Frank's one-half share of this sum, $154,513.61. It did not, however, include the $20,700.00 which he received as salary from February 1, 1947, until his death. This amount was reported instead as 1948 income, on the theory that the partnership fiscal year continued, despite Frank's death, until January 31, 1948. The Commissioner, asserting that the partnership tax year was terminated by Frank's death, determined a deficiency for 1947, designating the salary of $20,700.00 as 1947, rather than 1948, income.

Similarly, Howard filed his return, reporting as 1947 income only his share of the partnership income for the fiscal year ending January 31, 1947. The entire partnership profits earned between February 1, 1947, and November 21, 1947, to which Howard alone was entitled (less $20,700.00 salary for Frank), and all income from November 21 to December 31, as well, were not reported until the following year, when they were returned as 1948 income. As with Frank, the Commissioner determined a deficiency in Howard's 1947 taxes, on the theory that by the operation of paragraph 11, Frank's death terminated the partnership tax year, and all income of the business from January 31, 1947, to the end of the calendar year was taxable to Howard as 1947, and not as 1948, income.

The law is authoritatively declared for us in *Guaranty Trust Co.* vs. *Commissioner*, 303 U.S. 492. Paragraph 11 of the Knipp partnership agreement makes the analogy between the two cases a close one.

In the *Guaranty Trust* case, the partnership was on a fiscal year basis ending July 31, while the deceased partner was on a calendar year basis. After his death on December 16, 1933, the trust company, his executor, making its return for the decedent's 1933 income, included his share of the firm profits accruing to the end of the fiscal year on July 31, 1933, but omitted his share of the firm profits earned between that date and his death. The Commissioner determined a deficiency by adding to the 1933 taxable income the decedent's share of firm profits between July 31 and December 16, 1933.

The basis of the Supreme Court's decision that the Commissioner's determination was correct was that both by the practical construction given to the partnership agreement by petitioner and the surviving partners, and by the applicable provisions of the New York Partnership Act, decedent's death dissolved the partnership, terminated his right to share in the profits, and fixed the date as of which the surviving partners were bound to account for profits.

The Supreme Court held that the Congressional purpose was to make taxable in the individual taxpayer's year all income distributable to him during that year. A pertinent lesson of that case is that "receipt of income or accrual of the right to receive it within the tax year is the test of taxability." *Guaranty Trust Co.* vs. *Commissioner*, supra, p. 498. Earlier, in the Court of Appeals for the Second Circuit, which likewise decided the case for the Commissioner, Judge Chase had said (89 F. 2d 692, 693): "The accounting whenever it took place was as of that date [the death]. That was when, in contemplation of law, his share of the profits became distributable." In neither Court was the fact that the accounting was not completed until the following calendar year treated as material. We cannot escape the clear effect of the decision in the *Guaranty Trust* case that termination of sharing in profits was for the purposes of the income tax law a termination of the partnership tax year.

In the instant case, the same result is required by paragraph 11 of the partnership agreement. By its command, the partnership, as far as participation in income was concerned, ceased to exist. By virtue of Frank's death, Howard received all profits from partnership transactions, not only with respect to business yet to be completed during the winding-up period, but indeed, even profits on completed transactions dating back as far as January 31, 1947.

The petitioners think it significant that in *Guaranty Trust*, the surviving partners undertook to form a new partnership after the decedent's death, to take effect retroactively as of the date of his death. Here, Howard formed a corporation that took over the business as of January 31, 1948; but in the intervening period, from November 21, 1947, to January 31, 1948, paragraph 11 of the partnership articles created the same result as in the *Guaranty Trust* by completely immunizing the decedent's estate from all operations, whether resulting in profits or losses. The fact that in *Guaranty Trust*, the succession was by a number

of partners, while here it was by one individual, does not distinguish the cases. The significant fact common to both cases is that the partnership fiscal year ended when the decedent's estate no longer had its capital at risk, to be affected by gains or losses from the operation of the business.

In no true sense can it be said that after Frank's death, Howard was winding up the business of the partnership; he was operating on his own, and Frank's estate had nothing at stake. The income tax law is concerned merely with income, and inasmuch as sharing of profits had ceased, the partnership had effectually terminated in the eyes of the tax law.

We are not dealing here with the normal situation where the decedent partner continues during the winding-up period to share in profits accruing from outstanding transactions. See note, 80 A.L.R. 15, 32. Under generally recognized local law, there is such a sharing of partnership profits where the partners have made no other agreement; but nothing precludes their making such an arrangement as was made here. The Uniform Partnership Act, which is in effect in Maryland, Article 73A, Flack's Annotated Code of Maryland, was in effect in New York when the *Guaranty Trust* case arose and was referred to in that opinion; yet its provisions, which include the distinction normally to be observed between dissolution and termination, were not deemed in the circumstances to prevent termination of the partnership tax year at the time of the death. Where the partners have not substituted their own arrangement, and the deceased partner's interest continues to be subject to pending transactions, the law recognizes that ordinarily, there is good reason for allowing the tax year to continue after dissolution and until its normal conclusion, unless sooner terminated by a complete winding-up of the firm. In the present circumstances there is no reason for the distinction between dissolution and termination, at least as far as the income tax law is concerned.

The Government advances the additional argument that one cannot be a partner with himself and that, for this reason, too, the partnership year terminated as of Frank's death. We agree with the taxpayer that this argument draws an unnatural distinction between cases where a single partner survives and where there are more than one survivor. We have shown that under the Uniform Partnership Act, a single survivor may, as to unfinished business, be a partner with the decedent; and in an appropriate case the partnership will, under a legal fiction, be deemed to continue. The distinction to be made here, however, is that the parties specifically agreed not to be partners as to income arising after Frank's death; and the same result would seem to follow from such an agreement where there is only one survivor, no less than if there were more than one. Here the parties negatived any post-mortem partnership; none is required by the necessities of the situation; nor will the Uniform Partnership Act impose it.

But, it is insisted, the pending negotiations, begun before Frank's death but completed later, might have affected not only the capital accounts of the partners as of January 31, 1947, as they indeed did, but they might also have wiped them out, and affected the income of Frank which had been paid or was due him in the form of withdrawals. This contention, however, must fail, for it is directly contrary to a clear and indisputable finding of fact made by the Tax Court in construing the written agreement and oral understandings. The decedent's withdrawals, according to the finding, were not to be affected by outstanding partnership debts; for ". . . if the partnership income was insufficient to cover the partners' contractual drawings in any year, a partner who died during the year could not be charged with any part of the decrease in net partnership assets, and was entitled to his full contractual drawings or 'salary.'"

If Frank's share was fixed, it follows that Howard's was, too. Howard was entitled to all the profits of the business arising after January 31, 1947. While the exact amount

might be subject to computation and might not be free from uncertainty by reason of pending renegotiations, he was no less certain as to the amount of his income in the year 1947 than any business man similarly engaged in business as an individual. Every taxpayer in a going business must compute his profits at the end of the tax year, since the scheme of the statute contemplates annual returns and the taxation of annual income, although it necessarily involves estimates in some instances which may require correction at a later time.

Decisions in several circuits have been cited to us as supporting a contrary view. *Henderson's Estate* vs. *Commissioner*, 5 Cir., 155 F. 2d 310; *Girard Trust Co.* vs. *U.S.*, 3 Cir., 182 F. 2d 921; *Commissioner* vs. *Mnookin's Estate*, 8 Cir., 184 F. 2d 89. These, however, turned on facts negatived here. They disclose the converse of the arrangement between the Knipps, because in those cases there was a continuation of the sharing of partnership income after the death of a partner. The two situations are so different as to require a difference in result. This was recognized in *Girard Trust Co.* vs. *U. S.*, 3 Cir., 182 F. 2d 921, a case chiefly relied on by the taxpayers. The opinion, by Judge Hastie, contains, at page 924, this significant language: "If there is no agreement for continuation upon the death of a partner, and if distributive shares are determined and allotted as of that date, the partnership has established an abbreviated accounting period coterminous with the life of the deceased partner." Even where the deceased partner's estate continued to share in profits for a short period after his death, the Court of Appeals for the Second Circuit felt constrained to follow the *Guaranty Trust* decision. *Commissioner* vs. *Waldman's Estate*, 2 Cir., 196 F. 2d 83.

Reliance is placed, also, upon the decision in *Heiner* vs. *Mellon*, 304 U.S. 271. We think such reliance misconceived. In that case, two corporations in the whiskey business had begun liquidation in 1918. The three stockholders, upon assignment to them of the corporate assets, took over the

liquidation as partners. One of them, Frick, died in December, 1919. The question before the Supreme Court was whether profits distributed to the surviving partners, the Mellon brothers, in 1920, the year after Frick's death, should be taxed in that year, or not until the liquidation had been completed. The Mellons argued that in a liquidation, one could never be certain before its termination whether it would finally result in a profit or a loss. The liquidation in fact continued till 1925. It was held that the business of the partnership was liquidation, and the Mellon brothers had to pay taxes on the profits each year as realized. The question there was not whether a tax year terminated upon the death of a partner, and it is significant that the Supreme Court did not think this was the point involved, for it did not ever refer to the *Guaranty Trust* case, which adjudicated such an issue less than two months earlier.

We have been referred to certain new statutory provisions in the Internal Revenue Code of 1954, Section 706(c), as having some indirect bearing on the case before us. The suggestion is made that this new provision, that death shall not end the taxable year of the partnership, was merely declaratory of the old law. With this, however, we cannot agree. "Bunching" of more than a year's income in a single tax year was, indeed, sought to be eliminated by Section 706(c). True, the Senate Committee Report (see U. S. Code, Congressional and Administrative News, 1954, p. 4723) does not explicitly treat bunching as permitted under the 1939 Internal Revenue Code, which controls this case. The report speaks in uncertain terms of such a "contention" being made. It cannot, however, be inferred from this alone that the Senate regarded the new Code as merely declaratory of the old law. The House Committee Report, on the other hand, plainly evidences the opinion that the new statute was not merely declaratory, but designed to effect a change in the law. It recites:

> "Under present law the death of a partner may result in the closing of the partnership year and the bunching

of more than a year's income in the decedent's last year. Where the partnership and the partners are on different taxable years, this rule may have the effect of concentrating as much as twenty-three months' income in the final return of the deceased partner, that is, the income for the partnership year ending within his taxable year and the income for the taxable year closed by the partner's death. The bill provides relief in this situation by preventing the partnership year from closing on the death of the partner. The partnership year will then run to its normal conclusion, and the decedent's share of the income for such year will be taxable to the estate." (See U.S. Code, Congressional and Administrative News, 1954, p. 4093.)

It is not within our province to give retroactive effect to the 1954 Act.

We have fully considered Mr. Justice Stone's observation in the *Guaranty Trust Company* case, that if the income in question were not taxable in 1933, it would not be taxable at all. It was proposed to us in argument that since the law was later changed to prevent escape from taxation,[3] the result here should not be controlled by *Guaranty Trust*. The suggestion cannot prevail for two reasons: first, because this feature of the old law was merely noted in passing and was not the basis of the Court's opinion in the *Guaranty Trust* case, as shown in the foregoing discussion and as recognized in *Commissioner* vs. *Waldman's Estate*, supra, 85; second, because it attributes to the Supreme Court a purpose to revise rather than interpret the income tax laws.

The argument that bunching income works a hardship in this case is the same as the one overruled in the *Guaranty Trust* case. Moreover, were the hardship of bunching a pertinent consideration, it would be mitigated by the fact that for a number of years, these taxpayers had the ad-

[3] Sec. 42(a), Internal Revenue Act of 1934, as amended in 1942; and also Sec. 126 of the Internal Revenue Act of 1942.

vantage of paying their taxes almost a year late because the partnership fiscal year deferred taxes on eleven months of firm profits until the following year. Fundamentally, the hardship here results from the fact that Howard's income was greater in 1947 than in 1948. If his 1948 income exceeded that of 1947, the rule for which he now contends would work to his disadvantage. We cannot be certain which interpretation of this statute will, in the long run, be more helpful to the Government, and which to the taxpayer. Even if we had a discretion in the matter, this should admonish us against letting the interpretation of a statute turn on a purely fortuitous circumstance; for in straining to avoid hardship here, we may make ourselves responsible for inflicting hardship upon future litigants. We are bound, in any event, by the *Guaranty Trust* case, and have no power to revise the law to meet the supposed equities of particular cases.

II

A second issue, raised by the Government's appeal, relates to computation of Frank's gross estate for estate tax purposes. The Tax Court held that the share of firm profits, above "salary," which Frank would have received for the period January 31, 1947, to November 21, 1947, had he lived, was not includable in his gross estate under Section 811(a) of the Internal Revenue Code of 1939. The Commissioner seeks reversal of this decision, reasoning that these profits constituted property of Frank at his death and passed to Howard by the partnership agreement as a testamentary disposition.

We are, however, unable to accept this reasoning, and agree with the decision of the Tax Court. The Commissioner's contention sharply conflicts with the plain and practical effect of the articles of partnership, which required a partner to live to the end of the partnership tax year in order to acquire any interest in the year's profits. Sharing, beyond accrued salary, was clearly dependent

upon survivorship, and unless this contingency was satisfied, a partner had no vested right in any part of the profits for any portion of the fiscal year. As the Tax Court correctly observed, the right to share was potential only and did not mature till the end of the tax year, if the partner was then living. In view of this, we do not think it would be correct to say that Frank, at the time of his death, possessed any share in the firm profits includable in his gross estate.

Accordingly, we uphold the decisions of the Tax Court upon both questions.

Affirmed

PARKER, Chief Judge, Dissenting in Part:

I agree with that part of the decision of the Court which relates to the estate tax, but respectfully dissent from its holding that the earnings of the partnership were taxable as income to the partners for the year 1947, and not at the end of the partnership's fiscal year in 1948. Sec. 188 of the Revenue Code of 1939, which is the section applicable here, provides:

> "If the taxable year of a partner is different from that of the partnership, the inclusions with respect to the net income of the partnership, in computing the net income of the partner for his taxable year, shall be based upon the net income of the partnership for any taxable year of the partnership (whether beginning on, before, or after January 1, 1939) ending within or with the taxable year of the partner."

The death of Frank on November 21, 1947, unquestionably dissolved the partnership. The question is whether it also terminated the partnership for all purposes, so that the fiscal year of the partnership ended with Frank's death, or whether the partnership was continued for the purpose of

winding up its affairs, so that its fiscal year for tax purposes did not end until January 31, 1948.

The facts are that the partnership was engaged in the performance of contracts which extended over considerable periods of time and, in the case of contracts with the government, were subject to termination and to renegotiation. Frank's capital account on January 31, 1947, to his credit on the books of the partnership, amounted to $226,320.90. As a result of negotiations with the government extending to as late as October 1951 and resulting in refunds and disallowances of claims, this balance was reduced to $54,875.96. On February 1, 1948 the business and assets of the partnership were transferred to and taken over by a corporation; but there can be no question but that the partnership business was continued and the settlement of its affairs was carried on by Howard as surviving partner until that date. On January 31, 1948, the partnership filed a tax return showing ordinary net income of $450,158.91, distributable in accordance with the partnership agreement* $429,458.91 to Howard and $20,700 (salary prior to death) to the estate of Frank. The contention of taxpayers is that under the statute above quoted this income was taxable to them for the year 1948. The contention of the Commissioner is that the partnership was ended for all purposes on Frank's death in 1947 and that the income of the partnership after January 31, 1947 was taxable to the partners in that year, notwithstanding that it will result in the injustice of requiring them to pay tax on partnership income for ap-

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*The applicable provision of the partnership agreement is as follows:

"*Eleven.* It is agreed among the partners hereto, anything in this agreement to the contrary notwithstanding, that in the event of any partner's death, the amount to the credit of said deceased partner on the firm's books on February 1, 1943, or on February 1 in any subsequent year, provided the partnership has run for twelve consecutive months; otherwise the date of settlement shall be as of the prior February 1, less the amount of his withdrawals over salary, shall be paid to the executors or administrators of said deceased partner, and same shall be in full settlement of the deceased partner's interest in said partnership."

proximately 22 months in a single year. The position of taxpayers not only is in accordance with what is just and right under the circumstances of the case, but is also, I think, in accordance with the statutory requirement.

While the partnership agreement contained no provision for the continuance of the partnership business for purposes of liquidation in the case of the death of one of the partners, this was unquestionably provided by the law of Maryland, the state in which the partnership was operating. It is there expressly provided by statute that the death of a partner dissolves the partnership, but that the partnership is not terminated by dissolution but continues until the winding up of partnership affairs is completed, and that the last surviving partner has the right to wind up the partnership affairs. Flack's Annotated Code of Maryland, Article 73A secs. 30, 31 and 37. Here, not only did the law authorize the continuance of the partnership for the purpose of winding up partnership affairs, but the partnership was actually continued for that purpose until its business and assets were transferred to a corporation on February 1, 1948. In the meantime, although the deceased partner could not share in profits, it is perfectly clear that his share of the partnership profits could not be ascertained until the end of its fiscal year because of claims that might be asserted and adjustments and settlements that would have to be made and were made with customers and creditors. The importance of this clearly appears from the fact that Frank's capital account on the books of the partnership shrank as a result of claims against the partnership and negotiations and adjustments from $226,320.90 on January 31, 1947 to $54,895.96 when these matters were finally closed up sometime after his death. If the claims had been sufficiently large, they could have wiped out, not only the capital account, but all right to receive anything as profits from the earnings of the current fiscal year.* In such situation it was

* If the profits had been wiped out, the "salary" paid Frank would have been paid, not from profits, but from capital. 1 Montgomery's Federal Taxes 1294.

not possible, at the time of Frank's death, to determine what the earnings of the partnership were, and no reason why the rule of the statute should not be applied, i.e. no reason why returns of income derived from the partnership should not be made by the partners on the basis of the partnership's fiscal year, even though the partnership had been dissolved and was in process of liquidation during the last two months of the year.

In point is the decision of the Supreme Court in *Heiner v. Mellon*, 304 U. S. 271. In that case it was held that the death of one of the partners, which dissolved the partnership before the tax year in question, did not terminate the partnership or relieve it from filing a return. It is true that in that case the estate of the deceased partner shared in the profits of the continuing business; but the criterion laid down by the Supreme Court was not the sharing of profits but the continuing of the partnership business, as here, until the winding up of the partnership affairs. The Supreme Court referred to the statute of Pennsylvania which is like the statute of Maryland in that regard, saying:

> "The fact that the partnerships had been dissolved by Frick's death before 1920 does not affect the liability of the Mellons as surviving partners for income taxes on their distributive shares of the net profits made in that year. Compare Rossmoore v. Anderson, 1 F. Supp. 35 (S.D. N.Y.), affirmed, 67 F. 2d 1009 (CCA2); Rossmore v. Commissioner, 76 F. 2d 520 (CCA2). The business of A. Overholt & Company did not terminate on Frick's death. Although dissolved, the partnerships and the business continued, since, as stated in the Pennsylvania Uniform Partnership Act: 'On dissolution the partnership is not terminated, but continues until the winding up of the partnership affairs is completed.' Throughout the year 1920, the business of selling stock on hand and deriving income therefrom was carried on precisely as it had been theretofore, and for the same purpose. Article 424 of Regulations 45

recognizes that even in the hands of a receiver a partnership must file a return."

The Commissioner relies, and the Tax Court bases its decision very largely on *Guaranty Trust Co.* v. *Com'r*, 303 U.S. 493, which held that the return for a deceased partner on the calendar year basis must include his share of partnership profits made by the partnership from the beginning of its fiscal year to the time of his death within the calendar year. In that case, however, there was not a continuing of the partnership business for purposes of liquidation, but the amount to be received by the estate of decedent was fixed and the business was carried on under a new agreement. The question in the case was whether the decedent's share of the earnings for the portion of the fiscal year prior to his death was to escape taxation,* not whether it should be taxed in the succeeding calendar year. In that case the Supreme Court said "Receipt of income or accrual of the right to receive it within the tax year is the test of taxability, not the time it has taken the taxpayer to earn it nor the duration of his investments which have finally resulted in profit." Here the right of taxpayers to receive income in connection with the partnership business did not accrue or become fixed upon Frank's death but depended upon the partnership business, which was continued for purposes of liquidation.

A decision of the Tax Court which is directly in point and which sustains the position that the earnings of the partnership here involved should be taxed in 1948, the end of the partnership's fiscal year, and not in 1947 because

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*A loophole in the tax law which was closed by the subsequent enactment of Sec. 126 of Title 26 of the U.S. Code, which provides:

"The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is required by the decedent's estate from the decedent; * * *."

Frank died in that year, is *Walsh* v. *Commissioner* 7 T. C. 205, in which the Tax Court gave full consideration to both the Mellon and the Guaranty Trust cases. In that case one of the partners in a partnership with a fiscal year ending May 31 died on July 7, 1939. It was held that the surviving partner who reported on a calendar year basis should account for profits of the partnership in the year 1940, and not in 1939, on the ground that the partnership, although dissolved by the death of the partners, was not terminated and no new partnership was created. The Tax Court said:

> "The evidence here is clear that after Elliott's death there were no new partnerships created. Although the old partnerships were dissolved by Elliott's death, they were not terminated. Dial v. Martin (Tex. Civ. App.), 37 S. W. 2d 166, 177. The business being conducted by the partnerships had to be wound up by the surviving partners and an accounting made to the heirs and personal representatives of the deceased partner. Dial v. Martin, supra. In that case the court, among other things said: 'Where a partnership is dissolved by the death of one of the partners, the surviving partner or partners have the right, and, moreover, it is their duty, to wind up the firm's business, and he is, in the eyes of the law, a trustee of the firm assets for that purpose, and as such trustee is entitled to the exclusive possession of all firm assets. * * *.'
>
> "To the same effect as above is Heiner v. Mellon, 304 U.S. 271. This case was decided by the Supreme Court some forty-eight days after it decided Guaranty Trust Co. of New York, supra, and in our opinion, throws more light on the issue which we have here to decide than does the Guaranty Trust Co. case."

The rulings of the Internal Revenue Service have been in accord with the principles of this decision,* although not

* These rulings provide in part as follows:

"Rev. Rul. 144, 1953-2 Cum. Bull. 212, 213: Accordingly, it is held that a change in the membership of a partnership resulting from the death, withdrawal, substitution, or, addition of a partner, or a shift of interests among existing partners does not, in itself, effect a termination of a partnership for Federal income tax purposes. Ordinarily, a partnership will be treated as continuing where the business of the partnership, or a substantial portion thereof, is continued. The returns of a continuing partnership should continue to be filed on the basis of the annual accounting period previously established by the partnership.

"Rev. Rul. 54-26, 1954-1 Cum. Bul. 153: Rev. Rul. 144, C.B. 1953-2, 212, revoked O.D. 228, C.B. 1, 190 (1919) and holds that a change in the membership of a partnership resulting from the death, withdrawal, substitution, or addition of a partner or a shift of interest among existing partners does not, in itself, effect a termination of a partnership for Federal income tax purposes. Rev. Rul. 144 also holds that a partnership's basis in its assets is distinct from the partners' bases in their partnership interest, and is not affected by changes in such partnership interests. However, the bases of the interests of the partners may be affected by any change in membership.

"In view of the fact that Revenue Ruling 144 was not published until August 3, 1953 the Internal Revenue Service, under the authority of section 3791(b) of the Internal Revenue Code, will not require the provisions of that Revenue Ruling to be applied with respect to those changes in partnership interests which occurred prior to January 1, 1954.

"Rev. Rule 54-55, 1954-1 Cum. Bull. 153-154: Effect of the death of a partner in the case of a partnership consisting of only two partners. Advice is requested whether Rev. Rul. 144, C.B. 1953-2, 212, holding that a change in the membership of a partnership resulting from the death, withdrawal, substitution, or addition of a partner or a shift of interests among existing partners does not, in itself effect a termination of a partnership for Federal income tax purposes, applies to a case where one of two partners dies.

"In some cases the surviving partner and the estate of the deceased partner continue the business as a partnership within the meaning of section 3797(a)(2) of the Internal Revenue Code. In this situation the rule of Rev. Rul. 144 is applicable.

"In other cases the partnership business is wound up over a period of time and the deceased partner's estate continues decedent's interest in the profits and losses of the business during the winding-up period. In this situation the partnership continues

dealing with the case of a two member partnership which is continued after the death of one of the partners solely for the purpose of winding up and without participation in profits of such continued operation by the estate of the deceased partner. The Commissioner contends that there is a difference between the case where there are two or more surviving partners and where there is only one; but there is no basis in reason for such a distinction, just as there is no basis in reason for holding that there must be a sharing in profits from the continuation of the business for the purpose of winding it up. The statute contemplates that the partners shall account for partnership income in their returns as though it were received by them at the end of the partnership's tax year; and what makes the rule applicable notwithstanding the death of a partner is, not the number of partners nor the extent to which they do or do not share in profits, but the fact that the partnership business continues, even though this is only for purposes of liquidation, and that the interest of surviving partners may be affected thereby, even though this may be the result of claims, losses and adjustments without right to share in profits. Not until the end of the fiscal year of the partnership can it be determined what its earnings and profits for the year were; and not until then is there any reason for requiring a

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throughout such period. See Heiner v. Paul Mellon et al., 304 U. S. 271, Ct. D. 1345, C.B. 1938-1, 349.

In other cases the surviving partner, pursuant to an obligation undertaken in the partnership agreement, purchases the decedent's interest in the partnership from the decedent's estate for an amount fixed or determinable as of the date of decedent's death. In this situation the partnership terminates for Federal income tax purposes on the date of decedent's death.

"Since this Revenue Ruling applies the principles stated in Rev. Rul. 144 to the facts herein, it will be given nonretroactive application to the same extent as Rev. Rul. 144, and accordingly, pursuant to the authority contained in section 3791(b) of the Code, the Internal Revenue Service will not require this Revenue Ruling to be applied with respect to those changes in partnership interests which occurred prior to January 1, 1954. See Rev. Rul. 54-26, page 153, this Bulletin."

partner or the estate of a deceased partner to list as income his share of the partnership profits.

The government admits in argument that if there were more than one surviving partner, the rule contended for by taxpayers would be applicable, arguing that no man can be a partner with himself. This, however, is an oversimplification of the problem. The partnership is unquestionably dissolved by the death of one of the partners. The business is continued by the surviving partner, however, under the applicable statute for purposes of liquidation; and tax liability of partners, like other matters of business affecting the partnership, should be handled just as they were before dissolution. This is the sensible interpretation of the statute and it avoids the injustice to the taxpayer which would result from the bunching of income for a longer period within a single tax year.

The decisions in all of the Circuits which have dealt with the question, except the Second Circuit, support the position here taken. *Henderson's Estate* v. *Commissioner* 5 Cir. 155 F. 2d 310; *Girard Trust Co.* v. *United States* 3 Cir. 182 F. 2d 921; *Commissioner of Internal Revenue* v. *Mnookin's Estate* 8 Cir. 184 F. 2d 98; *Commissioner of Internal Revenue* v. *Tyree's Estate* 10 Cir. 215 F. 2d 78, 80. *Cf. Commissioner of Internal Revenue* v. *Waldman's Estate* 2 Cir. 196 F. 2d 83, in which there was a dissenting opinion by Judge Augustus N. Hand, who thought that the reasoning of the Third Circuit in the case of Girard Trust Co, supra should be followed. The case of *Commissioner* v. *Tyree's Estate*, supra, is directly in point here, the holding being that income from a partnership dissolved by the death of one of the partners was not returnable by the partners until the year in which the fiscal year of the partnership ended, where the law of Utah as well as the partnership agreement required that the partnership be continued after the death of a partner for the purpose of winding up its affairs. The court said:

> "Of course, when the doctor died he could no longer be a partner and, so far as he was concerned, the part-

nership terminated, but he had, however, agreed as to how the partnership affairs should be handled in case of the death of a partner. The Utah General Partnership Act provides that 'On dissolution a partnership is not terminated, but continues until the winding up of partnership affairs is completed.' 5 U.C.A. 1953, sec. 48-1-27. Pantages v. Arge, 1 Utah 2d 105, 262 P. 2d 745. The partnership affairs were continued as provided for in the agreement, and at the end of the first fiscal year after the death of Dr. Tyree, a distribution was made to his estate. Had he lived, the distribution would have been made at the same time.

"The Commissioner urges that the decision of the Tax Court is not in harmony with Guaranty Trust Co. of New York v. Commissioner, 303 U. S. 493, 58 S. Ct. 673, 82 L. Ed. 975, as was pointed out by the Second Circuit in Commissioner v. Waldman's Estate, 196 F. 2d 83. We do not believe, however, that the Guaranty Trust Company case is controlling. There, the partnership was concluded with the death of a partner and if subsequent partnership distributions were not included in the return made for the deceased, it would not be taxable. Section 126(a)(1) was passed shortly after the Guaranty Trust Company decision, and appears to have been for the purpose of closing the loophole in the tax laws pointed out in that case. The identical question before us has been considered by the Third, Fifth, and Eighth Circuits, which have held contrary to the contention of the Commissioner here. Henderson's Estate v. Commissioner of Internal Revenue, 5 Cir. 155 F. 2d 310, 164 A.L.R. 1030; Girard Trust Company v. United States, 3 Cir. 182 F. 2d 921; Commissioner of Internal Revenue v. Mnookin's Estate, 8 Cir. 184 F. 2d 89. Substantially all of the Commissioner's arguments here are fully answered in the Girard Trust Company case, to which views we adhere."

The Internal Revenue Code of 1954 makes it clear that as to cases governed by its provisions "the taxable year of a partnership shall not close as the result of the death of a partner" (26 USC 706(c)(1)); but this was not intended as a change but as a clarification of existing law. In the Senate Finance Committee's report on the code it is said (S. Report No. 1622 on H. R. 8300, 83rd Cong. 2d Sess. p. 89, 91):

> "Under present law there has been the contention that the death of a partner closes the partnership year and the bunching of more than a year's income in the decedent's last year. Where the partnership and the partners are on different taxable years, this would have the effect of concentrating as much as 23 months' income in the final return of the deceased partner * * *. Both the House and your committee's bill make it clear that the partnership year does not close upon the death of the partner. The partnership year will run to its normal conclusion, and the decedent's share of the income for this year will be taxable to the estate. To the extent that the right to receive this income constitutes income in respect of a decedent, the estate is entitled to a deduction for estate tax attributable to the inclusion in the decedent's estate."

For the reasons stated, it seems clear that the partnership was continued for the purpose of winding up its affairs until January 31, 1948, and that the share of the income to which Howard was entitled subsequent to January 31, 1947 was properly reported by him as income of the year 1948. I think that the same is true as to the partnership income to be reported by the estate of Frank. While it is true that the amounts received by Frank were received from the partnership as salary in 1947 prior to his death, the rule applies that partners' salaries and interest paid between the close of the partnership's fiscal year and the partners' individual tax periods should not be reported by individuals until the partnership's full year has elapsed. (Thompson,

18 B.T.A. 1192(A). The partnership might have a net loss for the year, and in this event the salary would not be income, but a withdrawal of capital. 1 Montgomery's Federal Taxes 1294 (1951 52). The rule applicable is thus stated by the Tax Court:

> "An agreement between partners to pay salaries from profits is nothing more than the determination of a basis for dividing such profits. A partner devoting his time and energies to the business of the firm is in fact working for himself and cannot be considered as an employee of the firm in the sense that he is in the service of another. It follows, therefore, that he can not be paid a salary by the firm out of earnings in the sense of compensation for services rendered to an employer. In effect any allowances drawn by a partner from partnership assets are payments which he makes to himself and no man can be his own employer or employee. A partner receiving a salary is merely transferring money from one to another of his own pockets." Estate of S. V. Tilton et al., 8 B.T.A. 914, 916.

To same effect: *Appeal of J. H. Goadby Mills* 3 B.T.A. 1245; *Melville v. Thompson* 18 B.T.A. 1192(A).

I would accordingly reverse the decision of the Tax Court to the effect that the earnings of the partnership were taxable as income to the partners for the year 1947 and not at the end of the partnership's fiscal year in 1948. The injustice and hardship of requiring taxpayers to pay tax on partnership income for 22 months in a single year is obvious. Their position that partnership income for the fiscal year ending in 1948 should be taxable to them in that year, accords, in my opinion, with the reasonable interpretation of the applicable statute. Such interpretation not only avoids injustice and hardship in this case, but recognizes a rule which is just and right in any case where a partnership is dissolved by the death of a partner but its business is continued by the survivor or survivors for the purpose of winding up its affairs.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 245

(No. 1145 — OCTOBER TERM, 1956)

HOWARD F. KNIPP and ESTATE OF FRANK H. KNIPP,
HOWARD F. KNIPP, EXECUTOR, *Petitioners,*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

REPLY BRIEF FOR PETITIONERS

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IN THE

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No. 245

HOWARD F. KNIPP and ESTATE OF FRANK H. KNIPP, HOWARD F. KNIPP, EXECUTOR, *Petitioners*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

REPLY BRIEF FOR PETITIONERS

In our petition for certiorari we have stated that the decision of the majority below was in conflict with decisions of this Court, in conflict with decisions of other Circuits, particularly the Tenth Circuit, and that the question is an important one. We respectfully submit that the Commissioner's brief in opposition does not obviate the need of this Court's intervention. The Commissioner continues to misconstrue the decisions of this Court, attempts to distinguish the present cases from decisions of the

other Circuits, and urges that the question is academic. He is in error on all points, as we show below.

1. There Can Be a Continuing Partnership Without a Sharing of Profits and Losses If There Is a Continuing Interest In Partnership Capital.

The Commissioner accepts and defends the essential foundation for the decision of the majority of the Court of Appeals, namely, that there can be no continuing partnership because Frank's Estate did not share in post-mortem operating profit or loss. He relies upon *Meehan* v. *Valentine*[1] for this proposition. This case involved an attempt to hold liable for firm debts, as a partner, an individual who had contractual right to share in partnership income under certain circumstances. This Court held that the individual had not been a partner, stating that (p. 623) ". . . participating in profits is presumptive, but not conclusive, evidence of partnership." This case provides no support for the Commissioner's contention that the sharing of profits is the only index of a partnership.

That a community of interest in partnership capital alone may evidence a partnership has been long recognized by this Court. In *Berthold* v. *Goldsmith*,[2] after pointing out that the existence of a partnership relationship is clear when there is a community interest in both capital and profit and loss, this Court stated (p. 542):

> ". . . it is seldom or never essential that both of these ingredients should concur in the case in order to establish that relation [partnership].

[1] 145 U. S. 611 (1892).

[2] 24 Howard 536 (1860).

> Cases occur, undoubtedly, where a community of interest in the property, without any regard to the profits, will almost necessarily lead to the conclusion that the relation between the parties was that of partnership . . ."

The present cases are examples.[3] Until Frank's capital account could be ascertained and liquidated, his Estate and Howard continued to have a community of interest in the firm capital, which continued to be employed in the business during the liquidation period.

Kasch v. *Commissioner*[4] also relied upon by the Commissioner, is an old family partnership case in which the purported family partnership was not recognized for tax purposes. It appeared that the minor partner had no interest in partnership income since he did not receive it. It also appeared that the minor had no interest in partnership capital. Neither of the two important indices of partnership was present.[5] The *Kasch* case is no authority for the view that without participation in profits and losses there can be no continuation of a valid partnership. The Commissioner also relies on *Avent* v. *Commissioner*[6]

[3] Since partnership arrangements very frequently provide for no sharing of post-mortem earnings by a decedent partner's estate, it is not unusual to find a situation where, for a period, there is a community of interest in capital only. The question involved is not confined to the particular type of partnership agreement found in the present cases.

[4] 63 F. 2d 466 (C.A. 5th, 1933), *certiorari denied*, 290 U. S. 644.

[5] Cf. *Beckwith* v. *Talbot*, 95 U. S. 289, 293, 294 (1877), where "there was no community of interest in the capital employed, nor in the profits and losses."

[6] 76 F. 2d 386 (C.A. 5th, 1935).

for the proposition that there cannot be a partnership relationship without a sharing of profits and losses. In *Arent* there was an agreement to enter into a profit sharing in the future, contingent upon the occurrence of events which did not transpire. Furthermore, there was no community of interest in the capital employed. The Court held there was no partnership. The case provides no basis for the Commissioner's position.

Frank's Estate, it is said (Br. in Op. pp. 11, 12), had "nothing at stake" in the partnership because it was not subject to post-mortem operating gains or losses. His capital account was very much at stake in the liquidating activities, which reduced it so greatly, since the partners had agreed that the deceased partner's capital account would be subject to adjustment as the result of the settlement of the pending controversies, renegotiation, and the like. (Pet. 7a). There was no such agreement in *Guaranty Trust Co. v. Commissioner*.[7] As we have already pointed out in our Petition (pp. 12, 13), in the *Guaranty Trust Co.* case, the decedent partner's capital interest, as well as his income interest, was determined as of the date of death without reference to post-mortem negotiations and settlements of pending controversies which could affect his capital interest. In the case of Frank's Estate the community of interest in capital continued during the liquidation period, as it did not in the *Guaranty Trust Co.* case.[8]

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[7] 303 U. S. 493 (1938).

[8] So also in *Karsch* v. *Comm'r*, 8 T.C. 1327, relied upon by the Commissioner. There a retiring partner sold his partnership interest to his partners and thereafter ceased to have any interest in partnership capital or income. The whole community of interest

Since Frank's Estate continued to have an interest in firm capital, it is immaterial even if Frank's share of partnership income became fixed as of the date of death. However, what became fixed was his right to receive $20,700 of so-called "salary." This might or might not be income. As pointed out by Judge Parker,[9] this sum was income only if the firm had sufficient earnings to cover it. The Commissioner's argument that Frank's share in partnership income was fixed at the date of death assumes the answer to the question here presented. The $20,700 can be determined to be income as of the date of death only if it is assumed that the partnership and, consequently, its tax year terminated at the date of death. That is the question here.

For this same reason the general language quoted by the Commissioner from the *Guaranty Trust Co.* case (Br. in Op. p. 9, footnote 9), to the effect that "receipt of *income* or accrual of the right to receive it within the tax year is the test of taxability" is of

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was terminated. The question there was not *when* partnership earnings were taxable but whether they were taxable as ordinary income at all. Our sole question is the year of taxability.

[9] Pet. 45a, footnote, showing that if the operations had resulted in a loss the $20,700 would have been a payment of capital, not income. See also *Smith* v. *Hensler*, 173 F. 2d 284, 287 (C.A. 6th, 1949), which states that: ". . . Payments made by the partnership to a partner during the course of its fiscal year are not necessarily payments of income: They may be distributions of capital. The partnership may be operating at a loss during part of the year, or profits made during the first part of the fiscal year may be diminished or wiped out by losses during the remainder of the fiscal year. Accordingly, it cannot be determined what *income* a partner has received from the partnership until the end of the partnership's fiscal year when an accounting has been made."

little assistance in solving the present problem. The determination that the $20,700 *was* income could only be made at the date of death if the answer to the question here posed is assumed to be that the partnership's year ceased with Frank's death. If the partnership and its tax year did not cease on the date of death, neither Frank's nor Howard's share in partnership income could be determined until the end of the partnership's taxable year, January 31, 1948.

2. The Tyree Case Is In Direct Conflict With the Decision Below.

The Commissioner asserts in a footnote (Br. in Op. p. 15) that *Commissioner v. Tyree's Estate*[10] is not in conflict with the decision below. The Tenth Circuit's holding was:

> "We hold that under the partnership agreement *and the law of Utah* the partnership was not ended for tax purposes with the death of Tyree . . ." (Emphasis added.) (P. 79).[11]

The Commissioner states that the basis for the Tenth Circuit's opinion was that the agreement provided that the death of a partner need not dissolve the partnership and that it might be continued to wind up the interest of the deceased partner. He ignores the fact that the Tenth Circuit in its holding also specifically relied upon the law of Utah

[10] 215 F. 2d 78 (C.A. 10th, 1954).

[11] The Utah law, like the Maryland law, provided that upon "dissolution a partnership is not terminated, but continues until the winding up of the partnership affairs is completed," quoted at page 80 of the *Tyree* opinion. See Flack's Annotated Code of Maryland, Art. 73A, § 30, Pet. 2a.

which provided to the same effect. This law is the same as Maryland's and that of the many other states which have enacted the Uniform Partnership Act.[12]

The Commissioner also emphasizes that the Tenth Circuit observed that the Tyree partnership agreement contained no provision for determining earnings on any date other than the close of the regular fiscal year. The actual date at which the determination is made is of no consequence in any of the cases.[13] Obviously, it would be a rare situation in which a determination could in fact be made on the date of death. It is clear that Tyree's estate was not entitled to share in profits earned after his death,[14] which the Commissioner and the majority of the Court below regard as the touchstone of a continued partnership. The earnings were determinable and to be determined as of the date of death (regardless of when they were actually determined) just as much as they were in the present case. In both Tyree's case and the present one it was possible to know, as of the date of death, the amount which the estate would receive ($20,700 in Frank's case), but it was impossible to characterize the amount as "income" until the end of the partnership's tax year. Subsequent losses would not have deprived Tyree or Frank of the determinable amounts but sufficient subsequent losses would have deprived the

[12] Where the statute makes the provision, nothing is gained by incorporating the same in the contract.

[13] In the *Guaranty Trust Co.* case upon which the Commissioner relies, the determination was not made until after the end of the calendar year. Pet. 36a.

[14] See Article 10 of the Tyree partnership agreement, p. 80 in the Tenth Circuit's opinion.

amounts of their character of income, unless the partnership taxable year was terminated by death.[15] Accordingly, as above noted, the determination of whether a sum constitutes income necessarily assumes a conclusion with respect to the end of the taxable year.

3. The 1954 Code Does Not Change the Law and the Question Here Presented Is Not Academic.

Section 706 (c)(1) of the Internal Revenue Code of 1954 states that "*except in the case of a termination of a partnership* . . . the taxable year of a partnership shall not close as the result of the death of a partner . . ." (Emphasis supplied.) The problem of termination, with which we are here concerned, accordingly continues to exist in the 1954 Code. The statute is not such a flat statement as the Commissioner believes. (Br. in Op. p. 16.)

To elaborate a little further—section 708 (b)(1)(A) of the 1954 Code provides that a partnership is terminated only if no part of any business "continues to be carried on by any of its partners *in a partnership*." (Emphasis supplied.) This definition of termination leaves us exactly where we were prior to the enactment of the 1954 Code. The question is whether after Frank's death Howard was carrying on business "in a partnership" during the liquidation period, as we believe, or as a sole proprietor, as the Commissioner contends. The 1954 Code provides no solution to the question of when a partnership and its tax year terminates for tax purposes. It is, there-

[15] If there were post-mortem operating losses neither Tyree's Estate nor Frank's Estate would, by the same token, have been entitled to deduct them, since the payment would be out of capital.

fore, not an academic question as asserted by the Commissioner.

CONCLUSION

For the reasons stated herein and in our petition, it is respectfully submitted that the petition for a writ of certiorari be granted.

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HOWARD F. KNIPP AND ESTATE OF FRANK H. KNIPP,
HOWARD F. KNIPP, EXECUTOR, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The findings of fact and opinion of the Tax Court (Pet. 6a–27a) are reported at 25 T. C. 153. The opinion of the Court of Appeals (Pet. 32a–54a) has not yet been officially reported.

JURISDICTION

The judgment of the Court of Appeals was entered on April 10, 1957. (Pet. 28a.) The petition for a writ of certiorari was filed on July 3, 1957. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Whether the Tax Court and the Court of Appeals properly held that, under the partnership agreement here involved, the partnership (which had an accounting fiscal year ending on January 31) terminated, for tax purposes, on November 21, 1947, the date of the death of one of the two partners, so that the income of the partnership for the period ending with such death (February 1, 1947–November 21, 1947) should be included in the income of the partners for 1947 rather than 1948 when the fiscal year of the partnership would have ended if the partnership had continued.

STATUTE INVOLVED

Internal Revenue Code of 1939:

> SEC. 181. PARTNERSHIP NOT TAXABLE.
>
> Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.
>
> (26 U. S. C. 1952 ed., Sec. 181.)

> SEC. 182. TAX OF PARTNERS.
>
> In computing the net income of each partner, he shall include, whether or not distribution is made to him—
>
> * * * * *
>
> (c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183 (b).
>
> (26 U. S. C. 1952 ed., Sec. 182.)

> SEC. 187. PARTNERSHIP RETURNS.
>
> Every partnership shall make a return for each taxable year, stating specifically the items

of its gross income and the deductions allowed by this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

(26 U. S. C. 1952 ed., Sec. 187.)

SEC. 188. DIFFERENT TAXABLE YEARS OF PARTNER AND PARTNERSHIP

If the taxable year of a partner is different from that of the partnership, the inclusions with respect to the net income of the partnership, in computing the net income of the partner for his taxable year, shall be based upon the net income of the partnership for any taxable year of the partnership (whether beginning on, before, or after January 1, 1939) ending within or with the taxable year of the partner.

(26 U. S. C. 1952 ed., Sec. 188.)

STATEMENT

The facts, as found by the Tax Court (Pet. 6a–12a), may be summarized as follows:

Howard F. Knipp, hereinafter referred to as Howard, is the executor of the estate of Frank H. Knipp, his uncle, hereinafter referred to as Frank, who died testate on November 21, 1947. (Pet. 6a.) Frank and Howard were the sole partners in the firm of John C. Knipp & Sons. They operated under a partnership

agreement under which each was to receive an annual "salary" of $25,000. There was to be an equal division of profits. (Pet. 6a.)[1]. Paragraph Eleven of the partnership agreement provided (Pet. 6a–7a):

> *Eleven.* It is agreed among the partners hereto, anything in this agreement to the contrary notwithstanding, that in the event of any partner's death, the amount to the credit of said deceased partner on the firm's books * * * as of the prior February 1st, less the amount of his withdrawals over salary, shall be paid to the Executors or Administrators of said deceased partner, and same shall be in full settlement of the deceased partner's interest in said partnership.

The partners had an oral understanding that the capital account of a deceased partner at the start of the fiscal year in which his death occurred would be subject to any adjustments made by the partnership on work completed and reflected in the account. However, the agreement did not contain a provision for continuation of the partnership in the event of death of a partner. And, under the agreement, Frank had no right to share in the partnership earnings for its fiscal year in excess of his contractual drawings unless he survived to the end of the partnership's fiscal year. If the partnership income was insufficient

[1] When the partnership agreement of 1943 was entered into, there was a third partner, John C. Knipp, who withdrew from the partnership in 1945. After the withdrawal of the third partner, Frank and Howard continued to operate under the partnership agreement of 1943, except for an oral amendment to provide for an equal division of the profits. (Pet. 6a, 7a, 8a.)

to cover the partner's contractual drawings in any year, a partner who died during the year could not be charged with any part of the decrease in net partnership assets and was entitled to his full contractual drawings or "salary". (Pet. 7a.)

The partnership kept its books and filed its returns on the basis of a fiscal year ending January 31. (Pet. 7a.) Frank and Howard filed their returns on the calendar year basis. (Pet. 6a, 12a.) The income of the partnership from February 1, 1947, to the death of Frank on November 21, 1947, was $351,344.09. Included in the amount was $18,887.50 for "salary" actually withdrawn by Frank prior to his death, and $1,812.50 to which he was entitled as "salary" at the time of his death. (Pet. 11a.)

A partnership return was filed for the fiscal year ended January 31, 1948, showing ordinary net income of $450,158.91, distributable $429,458.91 to Howard and $20,700 to the estate of Frank. A partnership return was filed for the fiscal year ended January 31, 1949, showing income all distributable to Howard. (Pet. 11a.) The income tax return of Frank for the period January 1, 1947, to November 21, 1947, reported the amount of $154,513.61 as the decedent's share of the income of the partnership for the fiscal year ended January 31, 1947. Fiduciary income tax returns were filed for the estate of Frank for the period November 21, 1947, to December 31, 1947, and for the calendar year 1948. The return for the period in 1947 reported no partnership income. The return for 1948 reported net income of $25,542.37, in-

cluding $20,700 of income from the partnership. The Commissioner, asserting that the partnership tax year was terminated by Frank's death, determined a deficiency for the period January 1, 1947, to November 21, 1947, designating the salary of $20,700 as 1947, rather than 1948, income. (Pet. 11a.)

Howard, in his return for the calendar year 1948, reported income of $405,646.60 from the partnership for the fiscal year ended January 31, 1948. In accordance with his determination that the death of Frank dissolved the partnership and terminated its accounting year, the Commissioner included in Howard's income for the calendar year ended December 30, 1947, the amount of $330,644.09 representing all of the income of the partnership from February 1, 1947, to November 21, 1947, less $20,700 distributable to Frank and the amount of $47,087.35 as income from the operation of the business as a sole proprietorship for the remainder of the calendar year 1947. The resulting deficiency in tax was accordingly asserted. (Pet. 12a.)

The Tax Court and the Court of Appeals affirmed the Commissioner's determinations in regard to the above-stated matters. (Pet. 17a–18a, 32a–42a.)[2]

[2] The Commissioner also determined that the earnings of the partnership for the period February 1, 1947, to November 21, 1947, should be added to the gross estate of Frank for estate tax purposes, under Section 811 (a) of the Internal Revenue Code of 1939 (26 U. S. C. 1952 ed., Sec. 811 (a)). The Tax Court (Pet. 19a–22a) and the Court of Appeals (Pet. 42a–43a) found against the Commissioner on this question. The Commissioner has not petitioned this Court for review of the estate tax issue.

ARGUMENT

1. The decision of the court below, affirming the decision of the Tax Court, is clearly correct. Section 188 of the Internal Revenue Code of 1939, *supra*, p. 3, provides that, if a taxable year of a partner is different from that of the partnership, the inclusions with respect to partnership income, in computing the net income of the partner for his taxable year, shall be based upon the net income of the partnership for any taxable year ending within or with the taxable year of the partner.[3] Under this provision, a partner on a calendar year basis who has an interest in a partnership on a fiscal year basis must report his share of all the profits for the partnership's entire fiscal year ending within his current calendar year.

The controversy here involved is primarily concerned with Section 188, *supra*. Frank and Howard, the two partners, were on the calendar year basis of reporting their income for tax purposes. (Pet. 6a, 12a.) The partnership was on the basis of a fiscal year ending January 31st. (Pet. 7a.) Accordingly, both Frank and Howard were required to include in their income tax returns for 1947 their distributive shares of partnership income for its fiscal year ended January 31, 1947. The question here, however, is whether the partnership's tax year terminated with

[3] A partnership is not a taxpayer. The income of a partnership is annually imputed to the individual partners, who are taxable on their distributive shares, whether distributed or not. Sections 181 and 182 (c) of the 1939 Code, *supra*, p. 2. However, under Section 187 of the 1939 Code, *supra*, pp. 2–3, the partnership is required to file information returns showing the distributive shares of the partners.

Frank's death on November 21, 1947, so that the distributive shares as of that date should also be included in the income of the partners for 1947.[1] The Tax Court and the majority opinion of the Court of Appeals answered this question in the affirmative. (Pet. 17a–18a, 32a–42a.)

We shall first discuss the issue with respect to Frank, the partner who died, and then discuss the issue with respect to Howard, the surviving partner. However, the rule involved in both cases is essentially the same.

The principle applicable here is wholly dependent for its results upon the construction given the partnership agreement in issue and the circumstances of the particular case. Thus, if a decedent's interest in partnership profits and losses is cut off by his death, the partnership's taxable year is considered terminated at that time and the decedent's estate must, pursuant to Section 188 of the 1939 Code, include his share of partnership profits from the beginning of the partnership's fiscal year to the date of his death in his return for the taxable period ending on the date of his death. *Guaranty Trust Co.* v. *Commissioner*, 303 U. S. 493, 495.

[1] As to the decedent Frank, this amount was $29,700, of which he withdrew $18,887.50 before his death. (Pet. 11a.) The distributive share of Howard was $309,944.09. (Pet. 12a.) If the question stated be answered in the affirmative, then the partnership's tax year ended on November 21, 1947, which fell within the partners' calendar year ended December 31, 1947. Therefore, under Section 188 of the 1939 Code the respective distributive shares of the partners were required to be returned as income in Frank's return for the period January 1, 1947 to November 21, 1947, and Howard's return for the calendar year 1947.

496. See *Karsch* v. *Commissioner*, 8 T. C. 1327; cf. *Smith* v. *Henslee*, 173 F. 2d 284 (C. A. 6).

In the *Guaranty Trust Co.* case the partnership was on a fiscal year basis ending July 31st, while the deceased partner was on a calendar year basis. The decedent died on December 31, 1933, and it was held that his estate was required, under Section 182 (a) of the Revenue Act of 1932, c. 209, 47 Stat. 469 (containing language substantially identical with that of Section 188 of the 1939 Code), to include his share of partnership profits, from the beginning of the partnership's fiscal year to the date of his death, in his 1933 tax return. This Court ruled that (pp. 495–496):

> Both by the practical construction given to the partnership agreement by petitioner and the surviving partners, and by the applicable provisions of the New York Partnership Act, decedent's death dissolved the partnership, terminated his right to share in the profits, and fixed the date as of which the surviving partners were bound to account for the profits. *Darcy* v. *Commissioner*, 66 F. (2d) 581.

The basis for the conclusion reached in the *Guaranty Trust* case appears to be two-fold: First, the settled principle that (p. 498) the "Receipt of income or accrual of the right to receive it within the tax year is the test of taxability" was held applicable under Section 182 (a) of the Revenue Act of 1932 (the predecessor of Section 188 of the 1939 Code) and this principle required the income, under the circumstances, to be returned as 1933 income; secondly, that (p. 501), the taxable year of a partnership under Section 182 (a) of the 1932 Act might, under the circumstances described in that case, be a partnership accounting period of less than twelve months, and that this too would require the income to be returned as 1933 income.

However, the courts have held that a different situation is presented if the partnership agreement specifically provides that the death of a partner shall not terminate the partnership and the decedent retains an interest in the partnership income. In those cases it is held that the partnership year does not close at the death of a partner but continues until otherwise terminated. *Grant* v. *Busey*, 230 F. 2d 290 (C. A. 6); *Commissioner* v. *Tyree's Estate*, 215 F. 2d 78 (C. A. 10); *Commissioner* v. *Mnookin's Estate*, 184 F. 2d 89 (C. A. 8); *Girard Trust Co.* v. *United States*, 182 F. 2d 921 (C. A. 3); *Henderson's Estate* v. *Commissioner*, 155 F. 2d 310 (C. A. 5); *Walsh* v. *Commissioner*, 7 T. C. 205.[6]

Both of the courts below recognized and agreed with the principles just discussed (Pet. 14a–16a, 39a–40a), and correctly applied them to the facts here. The situation existing in the present case was aptly summoned up by the Court of Appeals as follows (Pet. 38a):

> The distinction to be made here, however, is that the parties specifically agreed not to be partners as to income arising after Frank's death; * * *. Here the parties negatived any post-mortem partnership; none is required by the necessities of the situation; nor will the Uniform Partnership Act impose it.

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[6] The reasoning is that, in those circumstances, there is no way to determine the income to which the decedent partner is entitled until the termination of the regular partnership fiscal year. *Commissioner* v. *Tyree's Estate*, *supra*, p. 80; *Girard Trust Co.* v. *United States*, *supra*, p. 924; *Grant* v. *Busey*, *supra*, p. 292.

These circumstances[7] are conclusive support for the decisions below taxing to the decedent the income distributed and distributable to him in 1947 as 1947 income. *Guaranty Trust Co.* v. *Commissioner*, 303 U. S. 493.

The taxpayers' contention (Pet. 11–15) that Howard's business activities were merely those of a partner winding up the business and that, therefore, the partnership's tax year continued after Frank's death, is without merit. Both the Tax Court (Pet 17a–18a, 19a) and the Court of Appeals (Pet. 38a) found as a fact that under the agreement Frank's share of partnership income became fixed and distributable by his death and that the continuation of the business was wholly unnecessary to determine the distributable shares of the partners. In addition, it was found that any further operations could only be for the account of Howard—Frank's estate having

[7] In summary, the facts that support this conclusion are: (1) The partners agreed that settlement of a dead partner's interest in partnership assets was to be made by reference to the firm books as of February 1st prior to death (Pet. 6a–7a, 34a); (2) under the agreement, when a partner died his interest and any interest his estate might have in the income of the business ceased (Pet. 7a, 34a); (3) moreover, a decedent partner's estate was to be immune from all operations of the business—whether resulting in profits or losses—and any income that was due a decedent partner, or that he had already withdrawn, was not to be affected by outstanding debts (Pet. 7a, 38a); and (4) a surviving partner was given the right to receive all the profits from transactions, not only with respect to business yet to be completed after the death of one of the partners, but, indeed, even profits on completed transactions dating back to the close of the fiscal year of the partnership preceding a partner's death. (Pet. 7a, 36a.)

nothing at stake (Pet. 19a, 37a) and Howard himself so construing the partnership agreement (Pet. 47a). Since these findings are essentially factual in character and depend upon the peculiar circumstances here obtaining, the concurrent findings of the two courts below should be considered final. *Comstock* v. *Group of Investors*, 335 U. S. 211, 214; *Corn Products Co.* v. *Commissioner*, 350 U. S. 46, 51, rehearing denied, 350 U. S. 943. These findings create the identical situation presented to this Court in the *Guaranty Trust Co.* case and completely support the decisions reached below.[8] Furthermore, it needs little citation of authority for the proposition that one acting for himself is not winding up a partnership business.[9] See *Karrick* v. *Hannaman*, 168 U. S. 328; *Gable* v. *Williams*, 59 Md. 46.

Since, in this case, the partners themselves fixed the time for the termination of the partnership's accounting year and we do not have the situation where income distributed and distributable to the decedent partner at the time of death could not be determined, it follows, under the authorities already discussed, that

[8] Actually, the facts in the instant case are more favorable to the Commissioner since in the *Guaranty Trust Co.* case the succession to the previous existing business was by a number of partners, while here it was by one individual.

[9] Whether or not there was some activity in the nature of winding up the previous business is, on the issue of Frank's liability, completely immaterial for the reason that here, the decedent partner, by the partners' own arrangement, did not continue during the winding up period to share in profits accruing from outstanding transactions. See the opinion below (Pet. 37a) and also *Karsch* v. *Commissioner*, 8 T. C. 1327, 1331–1332.

as to Frank the partnership's tax year terminated at his death, and, under the facts, the income in question was required to be included in his tax return for the period January 1, 1947 to November 24, 1947.

As to Howard, the surviving partner, the facts of this case require the same result. See *Girard Trust Co.* v. *United States*, 182 F. 2d 921, 925 (C. A. 3). The Court of Appeals correctly observed (Pet. 38a) that "If Frank's share was fixed, it follows that Howard's was, too." It was found that he was entitled to all profits of the business arising after January 31, 1947, except Frank's "salary" which was fixed on the latter's death at $20,700.[10] (Pet. 19a, 36a.) And, as stated, *supra*, Howard so construed the agreement. (Pet. 17a.) The partnership terminated with Frank's death, and Howard continued the business as a sole proprietor. (Pet. 37a.) It follows that, since the partnership's tax year terminated within Howard's calendar year 1947, he was required to include his distributable income from the partnership and the income from his sole proprietorship in his 1947 return.[11]

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[10] Upon general principles of law, Frank (or his estate) could not, after his death, be considered a partner under the agreement here in issue. It is settled that one is not a partner who has no proprietary interest in profits as profits. *Meehan* v. *Valentine*, 145 U. S. 611, 625; *Avent* v. *Commissioner*, 76 F. 2d 386 (C. A. 5); *Kasch* v. *Commissioner*, 63 F. 2d 466, 468 (C. A. 5), certiorari denied, 290 U. S. 644.

[11] Rev. Rul. 144, 1953–2 Cum. Bull. 212, 213, Rev. Rul. 54–26, 1954–1 Cum. Bull. 153, and Rev. Rul. 54–55, 1954–1 Cum. Bull. 153, 154, relied upon by Judge Parker in his dissenting opinion (Pet. 49a), merely stand for the proposition that where the partnership business is wound up over a period of time and

The taxpayers' reliance (Pet. 10–15, 17–18) on *Heiner* v. *Mellon*, 304 U. S. 271, is wholly misplaced. In that case the interest of a deceased partner continued with a right in his estate to share equally with the two surviving partners in the profits of the business during the liquidation of the partnership—the antithesis of the circumstances here found.[12]

The taxpayers further assert (Pet. 18–20) that it is unfair that a partnership's taxable year can be terminated because of the fortuitous death of a partner. This contention was answered by this Court in *Guaranty Trust Co.* v. *Commissioner*, 303 U. S. 493, when it said (p. 498) that "Circumstances wholly fortuitous may determine the year in which income, whenever earned, is taxable, and may thus affect the amount of tax."[13]

2. There is no conflict of decisions. Although the taxpayers allege (Pet. 10–18) that the decision below is contrary to those in *Heiner* v. *Mellon*, 304 U. S. 271; *Girard Trust Co.* v. *United States*, 182 F. 2d 921

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the estate of the deceased partner continues to have an interest in the profits and losses of the business during the winding up period, then the partnership continues throughout such period. But the rulings are also authority for the corollary proposition that where, as here, the parties specifically provide for the termination of the accounting year of the partnership upon the death of a partner by depriving the deceased of any interest in profits or losses, and provide for the entire business to become the survivor's business, the partnership's business ends at that time.

[12] See, also, the further distinguishing factors between the *Mellon* case and the instant case as discussed by the Court of Appeals. (Pet. 39a–40a.)

[13] See the Court of Appeals' observation (Pet. 41a–42a) that, in fact, no hardship exists in this case.

(C. A. 3); *Grant* v. *Busey*, 230 F. 2d 290 (C. A. 6); *Commissioner* v. *Tyree's Estate*, 215 F. 2d 78 (C. A. 10); *Commissioner* v. *Mnookin's Estate*, 184 F. 2d 89 (C. A. 8); *Henderson's Estate* v. *Commissioner*, 155 F. 2d 310 (C. A. 5); and *Walsh* v. *Commissioner*, 7 T. C. 205, those cases are clearly distinguishable. In each of those cases there was a continuation of the sharing of partnership income after the death of a partner with the estate of the decedent or (and in most of those cases, in addition thereto) the partnership agreements specifically provided for the continuation of the partnership after the death of a partner and that any interest in the income of the partnership would not be computed until some future time. Therefore, in each case the income of the partners could not be determined until the end of the regular partnership fiscal year. These cases clearly indicate (see *Girard Trust Co.* v. *United States*, *supra*, p. 924) that if the circuit courts there involved were confronted with the facts here present they would have come to the conclusion reached by the courts below.[14]

[14] Indeed, the taxpayers seem to be generally of the same view but assert (Pet. 16–17) that, in any event, there is a conflict with *Commissioner* v. *Tyree's Estate*, *supra*. The following quotation (p. 80) was the basis for the court's opinion in the *Tyree's* case and it shows the taxpayers' contention to be without merit:

"The agreement specifically provides that the death of a partner need not dissolve the partnership and that it may be continued to wind up the interest of the deceased partner. *It contains no provision for determining earnings on any date*

3. The issue here, which the taxpayers seek to have this Court review, is now largely an academic one. Congress effected a change in the law, which has eliminated the area of possible controversy in this field, by Section 706 (c) (1) of the Internal Revenue Code of 1954 (26 U. S. C. 1952 ed., Supp. IV, Sec. 706 (c)), effective August 16, 1954. That statute flatly states that "the taxable year of a partnership shall not close as the result of the death of a partner". Since the Congress has enacted legislation specifically dealing with the question here in issue further review by this Court would not appear appropriate.

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other than the close of the regular fiscal year." [Italics supplied.]

That situation is wholly different from the facts here. It may do well to point out that in *Commissioner* v. *Waldman's Estate*, 196 F. 2d 83, the Second Circuit followed the decision of this Court in *Guaranty Trust Co.* v. *Commissioner*, 303 U. S. 493, though the estate of the deceased partner continued to share in profits for a short period after his death. Although the court there indicated that its decision may be contrary (p. 85) to those in *Commissioner* v. *Mnookin's Estate*, 184 F. 2d 89 (C. A. 8), *Girard Trust Co.* v. *United States*, 182 F. 2d 921 (C. A. 3), and *Henderson's Estate* v. *Commissioner*, 155 F. 2d 310 (C. A. 5), that is of no concern here since the *Waldman's Estate* case and the present case are essentially different on their facts. However, the *Waldman's Estate* case is not in direct conflict with the above cited cases, since in that case, although the partnership agreement provided that the executor of the deceased partner could elect to have his decedent's interest remain at the risk of the business, the surviving partners repudiated the executor's right to make such an election after he had attempted to exercise it.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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